

REPORT
OF THE
Attorney General
OF THE
State of Florida

From January 1, 1923, to December 31, 1924

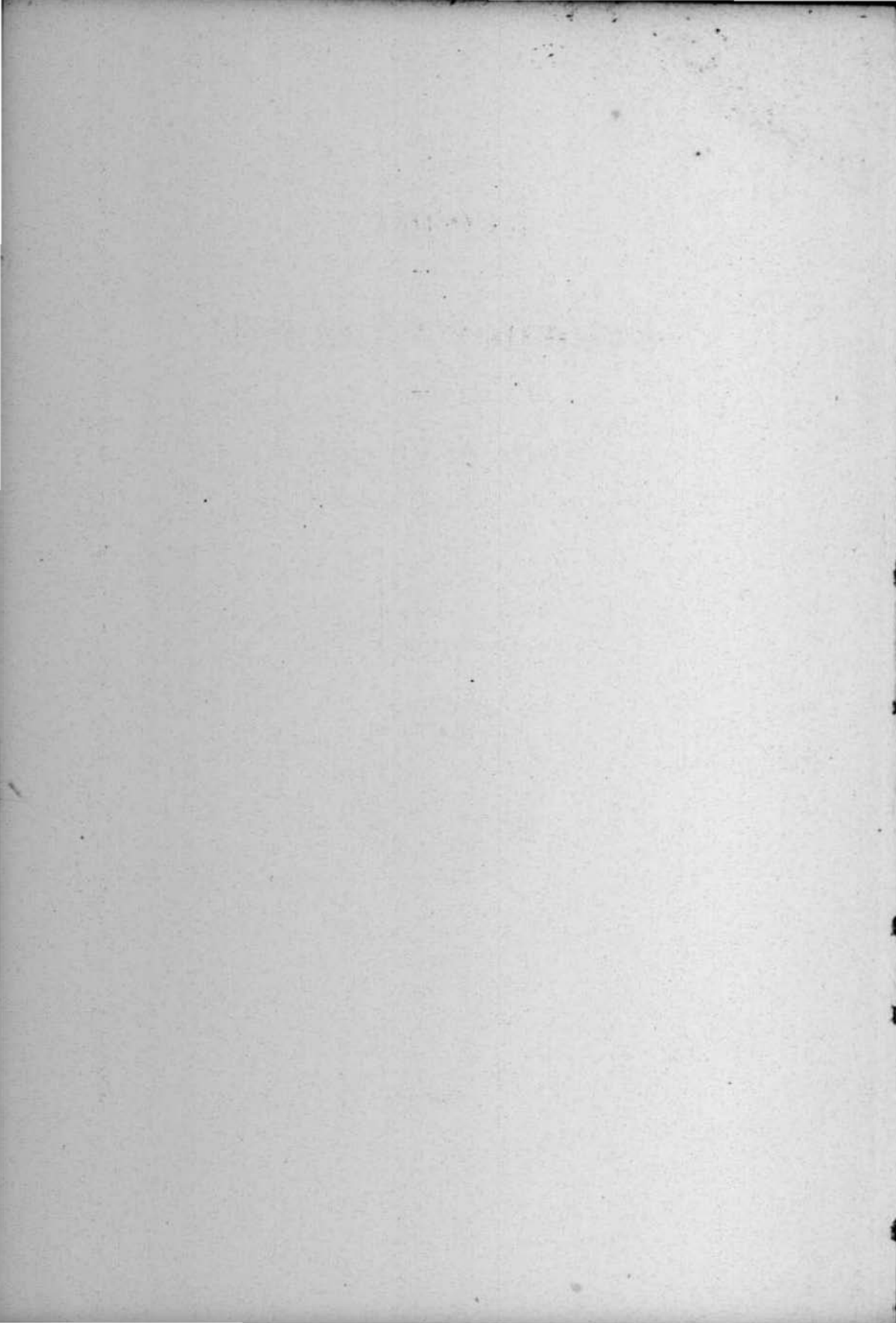
RIVERS BUFORD
Attorney General



TALLAHASSEE, FLORIDA
1925

T. J. APPLEYARD, PRINTER, TALLAHASSEE, FLORIDA





LIST OF THOSE WHO HAVE HELD THE OFFICE OF ATTORNEY GENERAL OF FLORIDA ---

JOSEPHUS BRANCH.....	1845-1846
AUGUSTUS E. MAXWELL.....	1846-1848
JAMES T. ARCHER.....	1848-1848
DAVID P. HOGUE.....	1848-1853
MARION D. PAPY.....	1853-1860
JOHN B. GALBRAITH.....	1860-1868
JAMES D. WESTCOTT, JR.....	1868-186—
A. R. MEEK.....	186—18—
SHERMAN CONANT	18—1871
J. B. C. DREW.....	1871-1872
H. BISBEE, JR.....	1872-1872
J. B. C. EUNNONS.....	1872-1873
WILLIAM A. COOKE.....	1873-1877
GEORGE P. RAINEY.....	1877-1885
C. M. COOPER.....	1885-1889
WILLIAM B. LAMAR.....	1889-1901
JAMES B. WHITFIELD.....	1901-1904
W. H. ELLIS.....	1904-1909
PARK TRAMMELL.....	1909-1913
THOMAS F. WEST.....	1913-1917
VAN C. SWEARINGEN.....	1917-1921
RIVERS BUFORD	1921-1924

STATE LAW DEPARTMENT

RIVERS BUFORD.....	Attorney General
J. B. GAINES.....	Assistant Attorney General
MARVIN C. MCINTOSH.....	Assistant Attorney General
MRS. ALLIE YAWN BROWN.....	Law Clerk
MRS. BERTA W. BOHLER.....	Secretary

REPORT OF ATTORNEY GENERAL

STATE OF FLORIDA

ATTORNEY GENERAL'S OFFICE

Tallahassee, December 31, 1924.

HONORABLE CARY A. HARDEE,
Governor of Florida.

SIR:

In obedience to the constitutional mandate directing each officer of the Executive Department to make full reports of his official acts, of the receipts and expenditures of his office and of the requirements of the same, to the Governor at regular periods, or whenever the Governor shall require it, and in compliance with long established custom by which such reports are made to cover the two calendar years immediately preceding each regular session of the Legislature, I have the honor to submit herewith the report of this office covering the period from January 1, 1923, to December 31, 1924.

GENERAL SCOPE OF DUTIES.

The constitutional duties of the Attorney General are prescribed by Section 22 of Article IV of the Constitution, as follows:

"The Attorney General shall be the legal adviser of the Governor, and of each of the officers of the executive department, and shall perform such other legal duties as may be prescribed by law. He shall be reporter for the Supreme Court."

The duties generally prescribed by statute are found in Section 89 of the General Statutes, as follows:

"The Attorney General shall reside at the seat of government, and shall keep his office in a room in the Capitol; he shall perform the duties prescribed by the Constitution of this State, and also perform such other duties appropriate to his office, as may from time to time be required of him by law, or by resolution of the Legislature; he shall, on the written requisition of the Governor, Secretary of State, Treasurer, or Comptroller, give his official opinion and legal advice in writing on any matter touching their official duties; he shall appear in and attend to in behalf of the State, all suits or prosecutions, civil or criminal, or in equity, in which the State may be a party, or in any wise interested, in the Supreme Court of this State; he shall appear in and attend to such suits or prosecutions in any other of the courts of this State, or in any courts of any other State, or of the United States; he shall have and perform all powers and duties incident or usual to such office, and he shall make and keep in his office a record of all his official acts and proceedings, containing copies of all his official opinions, reports and correspondence, and also keep and preserve in his office all official letters and communications to him, and cause a registry and index thereof to be made and kept, all of which official papers and records shall be subject to the inspection of the Governor of the State, and to the disposition of the Legislature by act or resolution thereof."

The Attorney General is also required by numerous statutes to perform other duties, and he is required by common law to exercise certain powers and perform other duties of great public importance.

SERVICE ON BOARDS.

A great deal of the very important business of the State is performed and handled by Boards and Commissions,

created by the constitution and by statutes, which consumes a considerable portion of the time of the State Officials; among these Boards and Commissions are the following, of all of which the Attorney General is a member:

BOARD OF COMMISSIONERS OF STATE INSTITUTIONS.

The membership of this Board consists of the Governor and his entire cabinet, which includes the Attorney General, State Treasurer, Secretary of State, Superintendent of Public Instruction, and the Commissioner of Agriculture. This Board has the management and control of all the State Institutions, which includes the Industrial School for Boys, the Industrial School for Girls, and the State Hospital, the State Prison Farm, and all State convicts. Necessarily the control and supervision of these institutions places upon this Board innumerable important duties, and the Attorney General being the legal adviser of this Board makes it necessary for him to not only act as a member of the Board but also to do all the legal work in connection therewith.

STATE BOARD OF EDUCATION

The membership of this Board consists of the Governor, Secretary of State, Attorney General, State Treasurer, and State Superintendent of Public Instruction. This Board is charged with the duty of taking charge of and handling all the lands held by the State for Educational purposes; to direct and manage and provide for the safe keeping of all the educational funds of the State; and also many other duties in connection with the general educational system. The Attorney General is the legal adviser of this Board as well as a member thereof.

STATE VOCATIONAL EDUCATIONAL BOARD.

Under the provisions of Chapter 7376, Acts of 1917, the Legislature accepted the provisions of the Act of Con-

gress approved February 23, 1917, entitled "An Act to Provide for the Promotion of Vocational Education; to Provide for the Co-operation with the State in the Promotion of such Education or Agriculture and the Trades and Industries; to Provide for Co-operation with the States in the Preparation of Teachers of Vocational Subjects; and to Appropriate Money and Regulate its Expenditures." Under the provisions of this law the State receives from the United States about Eighteen Thousand Dollars annually to aid in carrying on this work. The State Board of Education was designated as the State Vocational Educational Board, and upon it was placed the duty of designating the schools at which would be taught vocational education in agriculture and the trades and industries, also the carrying out of the provisions of this law. The work of this Board has consumed considerable time.

STATE BOARD OF PARDONS.

This Board is composed of the Governor, Secretary of State, Attorney General, Comptroller and Commissioner of Agriculture. Under the Constitution this Board may remit fines and forfeitures, commute punishment, grant pardons in all cases except treason and impeachment. With a prison population of some 1,400 there are many among them who feel that the powers of this Board should be exercised in their behalf. Consequently a large number of applications for pardon are made to this Board, and as each case is carefully considered much time is consumed in these investigations.

TRUSTEES OF THE INTERNAL IMPROVEMENT FUND AND STATE BOARD OF DRAINAGE COMMISSIONERS.

These two Boards are composed of the same officials, and consist of the Governor, Attorney General, Comp-

troller, State Treasurer and Commissioner of Agriculture. The Trustees of the Internal Improvement Fund are vested with the title to and have the exclusive management and control of all lands belonging to the State, which were acquired by Acts of Congress of March 3, 1845, and September 28, 1850, which at this time amounts to approximately one million acres. Upon the Board of Drainage Commissioners is laid the duty of establishing a system of canals, drains, levees, dikes and reservoirs to drain and reclaim the swamp and overflowed lands within the drainage districts. Much time is consumed by the Attorney General and other members of the Boards in looking after matters concerning both of these Boards.

STATE CANVASSING BOARD.

This Board is required to canvass the returns of all general elections for State officers. Its membership consists of the Secretary of State, Comptroller and Attorney General.

BOARD OF TAX EQUALIZERS.

This Board was created by the Legislature of 1921, and is composed of the Governor, Attorney General, and State Treasurer. It is the duty of the Board to hear appeals presented by boards of county commissioners from orders issued by the State Tax Equalizer to the County Assessors of Taxes.

FOREIGN INVESTMENT BOARD.

This Board is composed of the Comptroller, who is Chairman, and the Attorney General. It is commonly called the "Blue Sky Board." Applications for permits to sell stock in domestic and foreign corporations are made to this Board. Under the present law the power and authority vested in the Board is extremely limited and

entirely inadequate to protect the general public. The Comptroller and the Attorney General prepared a bill and had the same introduced in the Legislature of 1923, the purpose of which was to broaden the powers of the Board and thereby in some degree protect the public from impositions practiced by vendors of worthless stocks and securities. The bill however did not pass into law. It is to be hoped that the Legislature of 1925 will amend the present law so that the Board can not be forced to grant a permit for the sale of stocks and other securities in this State unless it shall be made to appear to the Board that such stocks or securities constitute reasonably safe investments.

BOARD OF APPRAISERS OF SECURITIES.

This Board is composed of the State Treasurer, the Comptroller and the Attorney General, and it is the duty of the Board to investigate and pass upon the sufficiency of all securities offered for deposit in the office of the State Treasurer, and in this connection it is the duty of the Attorney General to pass upon the validity of the liens created by such securities and to advise the Board whether or not the securities are valid and binding obligations.

BOARD OF RAILROAD PROPERTY ASSESSORS.

This Board is composed of the Comptroller, who is Chairman, the Attorney General and the State Treasurer. The name indicates the scope of the duties of this Board.

STATE LIVE STOCK SANITARY BOARD.

Chapter 8508, Acts of 1921, amended Section 2101, Revised General Statutes of Florida, and constituted the Governor and the Administrative Officers of the Executive Departments of the State the "State Live Stock Sanitary

Board" with the Governor as President. It is the duty of this Board to promulgate rules and regulations and to enforce the statutory law for the protection of live stock in the State of Florida. The Attorney General is a member of this Board and its legal adviser.

OTHER BOARDS.

In addition to the duties laid upon the Attorney General, as member of the above boards, he is required to act with the Commissioner of Agriculture in passing upon questions arising under the Provisions of the "Pure Food and Drugs Act."

OFFICIAL OPINIONS.

During the period covered by this report I have, as required by the Constitution and statutes of this State, from time to time, as requested by the administrative officers of the Executive Department of the State government, advised them and prepared written opinions for them upon various subjects touching their official duties and powers. Copies of all these opinions are preserved in this office, and a number of them are incorporated in this report for the convenient use of such officers and others interested in the subject covered by them.

In addition to these official opinions, although not expressly required by law to do so, but in order to assist in a proper interpretation and application of the statutes pertaining to their powers and duties, I have, when requested, prepared written opinions for other State officers, State boards and commissions, including the State Hotel Commission, State Shell Fish Commission, State Labor Inspector, State Board of Control and State Board of Health. Some of these opinions are also incorporated in this report.

In addition to these written opinions, the Attorney General is frequently called into consultation by other

officers for legal advice relative to the various questions arising in their respective departments, and no small part of the duties of the office is that devoted to the investigations which are necessary to intelligently and properly advise in such cases. Necessarily much time is devoted to this work, but because of its character no record of it can be made.

UNOFFICIAL OPINIONS.

In the report of this office immediately preceding this one the following statement on this subject appears and it may be repeated here:

"This office is not charged with the duty of advising county, and district officers, but, as a matter of courtesy to those making inquiry, and with a view to assisting, when possible, to a uniform administration of the laws regulating the conduct and prescribing the powers and duties of such officers, I have, upon request therefor, written a large number of what may be termed unofficial opinions. A number of these communications indicating the character and scope of the inquiries are also incorporated in this report."

All such inquiries are replied to as promptly as the official duties of the office will permit, but it will be understood, of course, that official matters must have first consideration.

BOND ISSUE EXAMINED FOR THE STATE BOARD OF EDUCATION.

In pursuance of the policy of the State Board of Education to invest such of the State School Funds as are available for this purpose in securities issued by counties, municipalities and school and road districts in this State, it has been the duty of this office to examine a number of transcripts of the records of the proceedings had in the issuance of such bonds for the purpose of determining

whether or not they were valid and enforceable obligations of the counties, municipalities or districts. Such issues as are purchased are held by the State Treasurer.

STATE STATUTES TESTED IN THE SUPREME COURT.

During the period covered by this report the constitutional validity of a number of State statutes upon important subjects have been challenged and tested by appropriate court proceedings.

CIVIL CASES.

Under the title Schedule of Civil Cases report is made of the civil cases which have had attention.

CRIMINAL CASES.

The Attorney General represents the State in the Supreme Court of the State in all criminal cases and in all certiorari and habeas corpus proceedings.

Briefs on behalf of the State have been prepared and filed in the Supreme Court in all such cases and oral arguments on behalf of the State have been made in all of them in which oral arguments were requested and made by counsel for the plaintiffs in error.

PUBLISHING ACTS AND RESOLUTIONS OF THE STATE LEGISLATURE.

The Acts and Resolutions of the Legislature of this State for the regular session of 1923, were published, with marginal abstracts, as required by law, under the direction of this office.

An index to these laws and an index to the Journals of each branch of the Legislature were also prepared

under the direction of this office the index to the Journals having been prepared as provided by Chapter 6436, Acts of 1913, Laws of Florida.

REPORTER FOR THE SUPREME COURT.

The Attorney General is the Reporter for the Supreme Court.

During the period covered by this report four volumes of the opinions of the court have been published, namely, 85, 86, 87, and Vol. 88 is now in the hands of the printer.

A great degree of care must be exercised in this work, as the opinions filed by the court are expected to be accurately reproduced in the reports.

An index-digest and a table of cases are also prepared in this office as a part of each volume of these reports.

Respectfully submitted,

RIVERS BUFORD,

Attorney General.

APPROPRIATIONS AND EXPENDITURES

Appropriations.

January 1 to June 30, 1923—

Assistant	\$ 1,500.00	
Assistant	1,500.00	
Clerk	750.00	
Stenographer	600.00	
Incidental Expenses.....	250.00	
Purchase of Books.....	250.00	
Office Equipment	100.00	
Total		\$ 4,950.00

June 30, 1923, to June 30, 1925—

Assistant	\$ 7,200.00	
Assistant	7,200.00	
Law Clerk	3,600.00	
Secretary	3,000.00	
Incidental Expenses.....	1,200.00	
Purchase of Books.....	1,000.00	
Deficit Book Fund.....	500.00	
Office Equipment	400.00	
Total		\$ 24,100.00
Grand total		\$ 29,050.00

EXPENDITURES.

January 1, 1923, to January 1, 1925—

Assistants	\$13,800.00
Law Clerk	3,450.00

Secretary	2,850.00
Incidental Expenses	1,058.78
Purchase of Books and Deficit	
Book Fund	1,623.72
Office Equipment	324.59
Total	<u>\$ 23,107.09</u>
Bal. to cover all expenses to	
June 30, 1925.....	\$ 5,942.91

ITEMIZED STATEMENT

Of Expenditures of Attorney General from the Appropriation for the Purchase of Books, and Deficit on Books.

1923.	
January—Bancroft-Whitney Co., Index Ann.	
Cas. Notes	10.00
Amr. Law Rep. Vols. 18, 19 and 20.....	22.50
The Lawyers Co-Operative Pub. Co., R. C.	
L. Supp. Vol. 3.....	10.00
U. S. Advance Sheets, 1922 Term.....	3.00
West Publishing Co., Installment due September, 1922, and December, 1922.....	100.00
Pac. Rep. Vols. 204, 205, 206, 207, 208.....	25.00
S. E. Rep. Vols. 110, 111, 112.....	17.25
Fed. Rep. Vols. 279, 280, 281.....	16.00
N. E. Rep. Vols. 134, 135.....	11.50
S. W. Rep. Vols. 238, 239.....	10.00
N. W. Rep. Vols. 187, 188, 189.....	17.25
Amr. Digest, Vol. 86-90.....	7.50
July—The Amr. Law Book Co., Corpus Juris,	
Vols. 28, 29, 30.....	22.50
Annotations, C. J., 1923.....	8.00
Bancroft-Whitney Co., Amr. Law Rep. Vols.	
21, 22, 23.....	22.50

Amr. Law Rep. Digest.....	2.50
The Bobbs-Merrill Co., Florida Digest An- notated, 3 Vols.....	45.00
July—West Publishing Co., March 1st and June 1st, 1923, installments due on contract of March 19, 1921, with interest.....	101.25
So. Rep. Vols. 90, 91, 92, 93, 94.....	25.00
So Digest covering Vols. 86-90.....	1.50
S. W. Rep. Vols. 240, 241, 242, 243, 244, 245, 246, 247, 248.....	45.00
Fed. Rep. Vols. 282, 283, 284, 285, 286.....	20.00
Pac. Rep. Vols. 209, 210, 211, 212.....	20.00
S. E. Rep. Vols. 113, 114, 115.....	17.25
N. E. Rep. Vols. 136, 137.....	11.50
N. W. Rep. Vols. 190, 191, 192.....	17.25
Amr. Digest, K. N. S. Vol. 15a.....	7.00
*Lawyers Co-Operative Publishing Co., L. R. A. Digest Vols. 1 to 10.....	85.00
Thompson on Trials 4 Vols.....	30.00
Simkins, Fed. Prac. 1 Vol.....	15.00
1923 Cum. Supp. U. S. Compiled Stat.....	5.00
Rose's Jurisprudence in Federal Court, 2nd Ed.	7.50
Hopkins, New Fed. Equity Rules, 3d Ed.....	3.50
Black's Law of Judicial Precedents.....	4.50
August—West Publishing Co., Pac. Rep. Vol. 213	5.00
S. E. Rep. Vol. 116.....	5.75
S. W. Rep. Vol. 249.....	5.00
The Frank Shepard Co., Shepard's Florida Citations, June, 1923, to June, 1924.....	6.00
September—West Publishing Co., Amr. Digest, K. N. S. Vol. 16a.....	7.00
N. E. Rep. Vol. 138.....	5.75
So. Rep. Vol. 95.....	5.00
September installment on contract of March 19, 1921	50.00

Bancroft-Whitney Co., Amr. Law. Rep. Vol. 24	7.50
October—Bancroft-Whitney Co., Amr. L. Rep. Vol. 25	7.50
West Publishing Co., Fed. Rep. Vols. 287, 288	7.50
S. W. Rep. Vols. 250, 251.....	9.75
Pac. Rep. Vols. 214, 215.....	9.75
N. W. Rep. Vol. 193.....	5.50
Atl. Rep. Vol. 120.....	4.75
S. E. Rep. Vol. 117.....	5.50
West Publishing Co., Initial installment due on contract of June 21, 1923 (Atl. Rep.) ..	25.00
November 1, 1923, installment due on above contract	31.00
	970.00
Less 6% on \$150.50 (See Note).....	9.03
Total amount expended 1923.....	960.97

*The total of this item is \$150.50, but owing to the fact that 6% discount was allowed for cash—\$9.03—our account is only charged with \$141.47.

1924.

January—West Publishing Co., N. W. Rep. Vol. 194.....	5.50
N. E. Rep. Vol. 139.....	5.50
S. E. Rep. Vol. 118.....	5.50
Pac. Rep. Vols. 216, 217.....	9.50
Atl. Rep. Vol. 121.....	4.75
S. W. Rep. Vols. 252, 253.....	9.50
So. Rep. Vol. 96.....	4.75
Fed. Rep. Vols. 289, 290, 291.....	10.50
Amr. Digest Vol. 17a.....	7.00
So. Digest, covering Vols. 91-95.....	1.50
Installment on contract of March 19, 1921..	50.00

Bancroft-Whitney Co., Amr. Law. Rep. Vol. 26	7.50
Lawyers Co-Operative Publishing Co., U. S. Supreme Court Rep. Advance Sheet, 1923.	3.00
R. C. L., Supplement, Vol. 4.....	10.00
American Law Book Co., Corpus Juris, Vols. 31, 32	15.00
February—West Publishing Co., Ware on "From Court to Court".....	2.00
West Publishing Co., February installment on contract of June 21, 1923.....	31.00
March—West Publishing Co., Final installment on contract of March 19, 1921.....	50.90
April—West Publishing Co., Supreme Court Report. Vol. 43.....	4.75
N. W. Rep. Vol. 195.....	5.50
N. E. Rep. Vols. 140, 141.....	11.00
S. E. Rep. Vol. 119.....	5.50
Pac. Rep. Vols. 218, 219, 220.....	14.25
Atl. Rep. Vol. 122.....	4.75
S. W. Rep. Vols. 254, 255, 256.....	14.25
So. Rep. Vol. 97.....	4.75
Fed. Rep. Vols. 292, 293.....	7.00
July—West Publishing Co., May 1st installment on contract of June 21, 1923.....	31.00
Zoline App. Juris. and Prac.....	10.00
N. W. Rep. Vol. 196.....	5.50
N. E. Rep. Vol. 142.....	5.50
S. W. Rep. Vols. 257, 258, 259.....	14.25
S. E. Rep. Vols. 120, 121.....	11.00
So. Rep. Vol. 98.....	4.75
Atl. Rep. Vol. 123.....	4.75
Pac. Rep. Vols. 221, 222, 223.....	14.25
Fed. Rep. Vols. 294, 295.....	7.00
Amr. Digest, K. N. S. Vol. 18a.....	7.00
July—The American Law Book Co., Corpus Juris, Vol. 33.....	7.50

Annotations, 1924	8.00
The Lawyers Co-Operative Pub. Co., 5 Year Digest, Supp. U. S. R.....	6.50
U. S. Rep. Vols. 67, 68.....	15.00
Bancroft-Whitney Co., A. L. R., Vols. 27, 28, 29.....	22.50
August—West Publishing Co., August installment on contract of June, 21, 1923.....	31.00
September—The Frank Shepard Co., 1 Year's Subscription to Shepard's Florida Citations, Aug., 1924 to Aug., 1925.....	7.00
Bancroft-Whitney Co., A. L. R. Vol. 30.....	7.50
A. L. R. Digest, 1923.....	2.50
The American Law Book Co., Corpus Juris, Vol. 35	7.50
October—West Publishing Co., N. W. Rep. Vols. 197, 198.....	11.00
N. E. Rep. Vol. 143.....	5.50
S. W. Rep. Vols. 260, 261.....	9.50
S. E. Rep. Vol. 122.....	5.50
So. Rep. Vol. 99.....	4.75
Atl. Rep. Vol. 124.....	4.75
Pac. Rep. Vols. 224, 225.....	9.50
Fed. Rep. Vols. 296, 297.....	7.00
Amr. Digest, K. N. S., 19a.....	7.00
November—West Publishing Co., November installment on contract of June 21, 1923.....	31.00
The Lawyers Co-Operative Pub. Co., U. S. Advance Sheets, Oct. Term, 1924.....	3.00
December—Bancroft-Whitney Co., A. L. R. Vols. 31, 32.....	15.00
The American Law Book Co., Corpus Juris, Vols. 34 and 36.....	15.00
Total amount expended 1924.....\$	662.75

COMPILED STATEMENT OF BOOK ACCOUNT.

Appropriations for first six months	
1923	\$ 250.00
Appropriations for 2 years from	
June 30, 1923, to June 30, 1925.	1,500.00
Total	\$ 1,750.00
Total Amount expended as per	
above statements	1,623.72
Balance to cover purchases to July	
1, 1925	\$ 126.28

ITEMIZED STATEMENT

Of Expenditures of Attorney General from Appropriation for Incidental Expenses.

1923.	
January—Western Union Tel. Co. messages..	\$ 3.97
February—Sou. Tel. & Const. Co., message..	.60
D. A. Dixon, 1 dozen pencils.....	.50
Geo. D. Barnard, 6 dozen scratch pads.....	12.00
Dameron-Pierson Co., Letter heads, 5M.....	43.75
Postage on letter heads.....	1.22
W. C. Dixon, freight and drayage on above letter heads	1.89
Western Union Tel. Co., messages.....	4.15
Chas. Williams Hardware Co., step-ladder..	4.50
W. H. May, Postmaster, postage stamps to to be used in mailing Attorney General's Reports	20.00
J. B. Gaines, expense trip to Perry, in re. Validation of Perry Town Bonds.....	12.01
March—Sou. Tel. & Const. Co., message.....	.25
Western Union Tel. Co., messages.....	1.31
Amr. Ry. Express Co., express on books....	.42
Grant Furniture Co., balance on transfer files	23.56

Powell & Ward Cleaning Co., cleaning 5 small rugs	2.50
J. B. Gaines, expense trip to Perry in re. Perry Improvement Bonds.....	9.56
T. J. Appleyard, 100 clasp envelopes.....	2.75
April—Sou. Tel. & Const. Co., moving telephone	1.00
W. J. McElwain, remodeling desk and repairing book cases.....	25.95
Western Union Tel. Co., messages.....	3.00
May—W. H. May, Postmaster, postage stamps for use in office.....	5.00
Western Union Tel. Co., messages.....	5.17
T. J. Appleyard, Typewriter paper.....	7.00
June—Western Union Tel. Co., messages.....	3.24
W. H. May, Postmaster, Stamps for use in office	5.00
Grant Furniture Co., 2 units book cases....	11.55
Grant Furniture Co., part payment on rug for office	37.15
July—Rivers Buford, Attorney General, expense trip to Madison and Jefferson Counties, in re inspection of lands for Board of Education	7.04
Sou. Tel. & Const. Co., messages.....	.60
Chas. Williams Hardware Co., 1 Pr. Scissors	.75
Western Union Tel. Co., messages.....	4.91
August—Western Union Tel. Co., messages....	.97
W. C. Dixon, drayage on box books.....	.50
September—Amr. Ry Express Co., charges on Typewriter	1.00
Rivers Buford, Attorney General, expense stop-over trip Jacksonville ,official business	7.99
Western Union Tel. Co., messages.....	1.89
W. H. May, Postmaster, stamps for use in office	10.00

W. H. May, Postmaster, Deposit on 5,000 2c envelopes for office use.....	11.96
October—Western Union Tel. Co., messages..	3.95
Sinclair Wells, 2 boxes carbon paper.....	6.40
W. H. May, Postmaster, balance on 5,000 2c envelopes for use in office.....	100.00
November—Western Union Tel. Co., messages..	6.37
December—W. H. May, Postmaster, stamps for use in office.....	10.00
Western Union Tel. Co., messages.....	11.62

1924.

January—Western Union Tel. Co., messages..	1.08
Rivers Buford, Attorney General, expense trip to Washington, D. C., made by Mr. Buford and Mr. M. C. McIntosh, Assistant Attorney General, in re Burnard Whitten v. State, and other legal matters, Jan. 12 to 17, both inclusive.....	208.04
February—Geo. D. Barnard Stationery Co., 10M embossed letter heads and freight..	87.63
W. C. Dixon, drayage	.50
H. R. Kaufman, typewriter oil 50c and box pins 75c.....	1.25
Sou. Tel. & Const. Co., message.....	.60
Western Union Tel. Co., messages.....	4.23
March—T. J. Appleyard, slips for use in making index Florida Reports.....	2.00
Western Union Tel. Co., messages.....	6.06
Rivers Buford, Attorney General, expense trip to Tampa attending meeting State Bar Association	44.37
April—Southern Tel. & Const. Co., messages..	.60
Western Union Tel. Co., messages.....	2.29
May—Western Union Tel. Co., messages.....	5.58
Tallahassee Furn. Co., 7 units, top and base, book cases No. 198, part payment.....	17.50

W. H. May, Postmaster, stamps for use in office	5.00
June—Western Union Tel. Co., messages....	3.87
J. W. Carter, Jr., 25 lbs. scratch paper.....	6.25
T. J. Appleyard, typewriter paper.....	8.75
July—Western Union Tel. Co., messages.....	5.89
W. L. Marshall, fixing office window.....	4.50
Leon Electric Co., 1 table lamp \$5.00; 2 light bulbs \$1.20; 1 light bulb 30c.....	6.50
August—Western Union Tel. Co., messages....	5.57
Sou. Tel. & Const. Co., messages.....	1.05
W. H. May, Postmaster, stamps for office.; Rivers Buford, Attorney General, expense trip to Quincy, in re application for restraining order against State Text Book Commission	10.00
September—Western Union Tel. Co., messages	6.56
October—Southern Tel. & Const. Co., messages	6.88
Western Union Tel. Co., messages.....	.75
J. E. McNair, 1 bottle Phenol 30c; 1 bottle denatured alcohol 25c.....	2.52
W. H. May, Postmaster, 5,000 No. 5 2c envelopes for office use.....	.55
November—Annie Mae Young, cleaning office and book cases.....	109.90
Geo. D. Barnard Stationery Co., 4 dozen No. 4039 scratch pads 9.60; express 1.99.....	2.00
C. G. Ward, Agt. S. A. L. Ry., mileage book for Attorney General.....	11.59
Rivers Buford, Attorney General, expense trip Jacksonville, in re National Surety Co. v. Amos et al.....	30.00
December—Western Union Tel. Co., messages..	7.96
W. C. Dixon, drayage.....	4.16
The Office Necessity Co., 1 bottle stamping ink	.50
Total amount expended 1923-1924.....\$	1,058.78

COMPILED STATEMENT OF INCIDENTAL EXPENSE ACCOUNT.

Appropriation for first six months, 1923	\$ 250.00
Appropriation for 2 years from June 30, 1923, to June 30, 1925	1,200.00
 Total	 \$ 1,450.00
Total amount expended as per above statement	\$ 1,058.78
 Balance to cover purchases to June 30, 1925.....	 \$ 391.22

ITEMIZED STATEMENT

Of Expenditures of Attorney General from Appropria- tion Office Equipment.

1923.

January—Grant Furniture Co., part balance on Transfer files.....	\$ 7.25
Dark Oak File Cases, base and top.....	80.25
Freight on Transfer Files.....	8.50
Finish on Desk.....	4.00
July—Grant Furniture Co., balance due on rug for office.....	7.85
August—D. A. Dixon, 24 No. 4039 scratch pads H. & W. B. Drew Co., 1M printed manuscript covers and 50 plain.....	3.74
Grant Furniture Co., O'Cedar Mop and Oil for office.....	30.00
September—Middle Florida Ice Co., Sanitary Water Cooler	2.25
Underwood Typewriter Co., 1 Underwood Typewriter No. 5-1717259.....	15.55
	63.15
 Total amount expended 1923.....	 \$ 222.54

1924.

January—B. A. Meginniss, Attorney American Surety Company, Premium on Notary Bond for Mrs. Allie Yawn Brown, Law Clerk	5.00
February—H. & W. B. Drew Company, new die and counter for aluminum pocket Notary Seal for Law Clerk.....	2.05
Marshall & Bruce Co., 150 Vertex File Pockets	25.15
Postage on File Pockets.....	1.59
March—Marshall & Bruce Co., 1 dozen stickit fillers	3.00
150 Vertex File Pockets, L. size.....	30.00
Postage on File Pockets.....	1.71
July—Leon Electric Co., 1 9" oscelating fan..	15.00
H. R. Kaufman, 2 boxes Ajax Eyelets.....	1.60
1 Stamp Pad	.60
September—T. J. Appleyard, 200 Index Cards/	.60
Geo. D. Barnard Stationery Co., 9 boxes paper fasteners.....	3.30
1 Fac Simile Signature Stamp.....	3.25
Postage and insurance.....	.24
Total amount expended 1924.....\$	93.09

COMPILED STATEMENT OF OFFICE EQUIPMENT ACCOUNT.

Appropriation for first six months		
1923	\$	100.00
Appropriation for 2 years from		
June 30, 1923, to June 30, 1925.		400.00
Total	\$	500.00
Total amount expended.....	315.63	
Amount reverted 7-1-23.....	8.96	324.59
Balance to cover purchases to June		
30, 1925	\$	175.41

SCHEDULE OF CIVIL CASES

CHANCERY.

*Circuit Court Second Judicial Circuit of Florida in and
for Franklin County. In Chancery.*

*Apalachicola Land & Development
Co., etc., et al., Complainants,
vs.*

*W. A. McRae, Commissioner of
Agriculture, Defendant.*

This suit was brought for the purpose of enjoining and restraining the Defendant from leasing or in any way interfering with the submerged lands of the Apalachicola Bay. A demurrer to bill of complaint was filed, which demurrer was sustained, and bill ordered dismissed by the Circuit Court. Complainants appealed to Supreme Court where Order Circuit Court was affirmed Nov. 8, 1923. Appeal taken to United States Supreme Court where now pending.

*Circuit Court, Second Judicial Circuit of Florida in and
for Leon County In Chancery.*

*Atlantic Coast Line Railroad
Company, Complainant,
vs.*

*Ernest Amos, as Comptroller,
Defendant.*

This is an action brought by Complainant praying that the Comptroller be restrained and enjoined from issuing, serving or levying warrants of said Comptroller or any

other writ, order or process, in attempting to collect from said Railroad Company, certain taxes, etc. Answer to Bill of Complaint filed December 1, 1924.

*Circuit Court Fourth Judicial Circuit of Florida in and
for Duval County. In Chancery.*

*Newcomb Barrs, Complainant,
vs.
Ernest Amos, Comptroller,
Defendant.*

This is a suit brought to cancel certain tax certificates issued upon certain property in Duval County upon sale of such property for the non-payment of taxes for the years 1907, 1908 and 1909. A demurrer on behalf of the defendant has been filed but has not yet been disposed of.

*Circuit Court Fifteenth Judicial Circuit of Florida in and
for Broward County. In Chancery.*

*Charles M. Butts, et al.,
Complainants,
vs.
Ernest Amos, as Comptroller,
et al., Defendants.*

This is a suit brought in an effort to cancel certain tax certificates issued upon certain property in Broward County upon sale of such property because of the non-payment of taxes for the years 1912 and 1913. Answer to Bill filed. Settled by agreement, and Final Decree entered May —, 1924.

*In the Supreme Court of Florida.
In Chancery.*

*The Clark-Ray-Johnson Co.,
Appellant,*

vs.

*G. D. Schultz, as Clerk, etc., et al.,
Appellees.*

This was a case originating in the Circuit Court of Citrus County, wherein the Appellant sought to have certain tax sale certificates cancelled. A demurrer was filed to the bill of complaint, which demurrer was sustained. The Appellant entered an appeal from the order of the court sustaining the demurrer to the Supreme Court, where order of Circuit Court was affirmed October 4, 1923.

*Circuit Court Fifteenth Judicial Circuit of Florida in and
for Broward County. In Chancery.*

Louisa Collins, Complainant,

vs.

*J. L. Holmberg, et al.,
Defendants.*

This is a suit brought in an effort to enjoin the defendants from asserting or attempting to assert any claim or title to certain lands in Broward County and be enjoined from issuing a tax deed to any person pursuant to application based upon certain tax certificates mentioned in Bill. The Attorney General, as Attorney for Ernest Amos, one of the defendants herein, decided to let case take its course and let the property be reassessed.

*Circuit Court Fifteenth Judicial Circuit of Florida in and
for Palm Beach County. In Chancery.*

*William W. Dewhurst,
Complainant,*

vs.

*Fred E. Fenno, Clerk Circuit
Court, et al., Defendants.*

This is a suit brought in an effort to cancel certain Drainage Tax Certificates dated July 2, 1923, issued upon certain land in Palm Beach County. An Answer on behalf of Defendants was filed.

*Circuit Court Eleventh Judicial Circuit of Florida in and
for Dade County. In Chancery.*

*Everglades Sugar & Land Company,
Complainant,*

vs.

*Ernest Amos, as Comptroller, et al.,
Defendants.*

This is a suit brought in an effort to cancel certain tax certificates issued upon certain property in Dade County upon sale of such property because of the non-payment of taxes for the years 1916, 1917, 1918 and 1919. A demurrer on behalf of Defendants was sustained to all parts of bill seeking to set aside certificates for 1919, and overruled as to all parts of bill seeking to set aside certificates for 1916, 1917 and 1918. Order allowing defendants to answer was made by Court. Answer filed.

*Circuit Court Eleventh Judicial Circuit of Florida, in and
for Dade County. In Chancery.*

*Everglades Land Company,
Complainant,*

vs.

*Ernest Amos, as Comptroller,
et al., Defendants.*

This is a suit brought in an effort to cancel certain tax certificates issued upon certain property in Dade County upon sale of such property because of the non-payment of taxes for the years 1916, 1917, 1918 and 1919. A demurrer on behalf of Defendants was sustained to all parts of bill seeking to set aside certificates for 1919, and overruled as to all parts of bill seeking to set aside certificates for 1916, 1917 and 1918. Order allowing defendants to answer was made by Court. Answer filed.

*Circuit Court Eleventh Judicial Circuit of Florida, in and
for Dade County. In Chancery.*

*Everglades Land Sales Company,
Complainant,*

vs.

*Ernest Amos, as Comptroller,
et al., Defendants.*

This is a suit brought in an effort to cancel certain tax certificates issued upon certain property in Dade County upon sale of such property because of the non-payment of taxes for the years 1916, 1917, 1918, and 1919. A demurrer on behalf of Defendants was sustained to all parts of bill seeking to set aside certificates for 1919, and overruled as to all parts of bill seeking to set aside certificates for 1916, 1917 and 1918. Order allowing defendants to answer was made by court. Answer filed.

*Circuit Court Fifteenth Judicial Circuit of Florida, in and
for Broward County. In Chancery.*

*Everglades Land Sales Company,
Complainant,*

vs.

*Ernest Amos, as Comptroller,
et al., Defendants.*

This is a suit brought in an effort to cancel certain tax certificates issued upon certain property in Broward County upon sale of such property because of the non-payment of taxes for the year 1917. A demurrer on behalf of defendants was filed, which demurrer was sustained April 29, 1924, and Complainant given leave to file amended bill on or before the Rule Day in June, 1924. No amended bill filed.

*Circuit Court Fifteenth Judicial Circuit of Florida, in and
for Broward County. In Chancery.*

*Everglades Sugar & Land Company,
Complainant,*

vs.

*Ernest Amos, as Comptroller,
et al., Defendants.*

This is a suit brought in an effort to cancel certain tax certificates issued upon certain property in Broward County upon sale of such property because of the non-payment of taxes for the years 1916 and 1917. A demurrer on behalf of defendants was filed, which demurrer was sustained April 29, 1924, and Complainant given leave to file amended bill on or before the Rule Day in June, 1924. No amended bill filed.

*Circuit Court Fifteenth Judicial Circuit of Florida, in and
for Broward County. In Chancery.*

*Everglades Land Company,
Complainant,*

vs.

*Ernest Amos, as Comptroller,
et al., Defendants.*

This is a suit brought in an effort to cancel certain tax certificates issued upon certain property in Broward County upon sale of such property because of the non-payment of taxes for the years 1916 and 1917. A demurrer on behalf of defendants was filed, which demurrer was sustained April 29, 1924, and Complainant given leave to file amended bill on or before the Rule Day in June, 1924. No amended bill filed.

*Circuit Court Fifteenth Judicial Circuit of Florida, in and
for Broward County. In Chancery.*

*Everglades Land Company,
Complainant,*

vs.

*Ernest Amos, as Comptroller,
et al., Defendants.*

This is a suit brought in an effort to cancel certain tax certificates issued upon certain property in Broward County upon sale of such property because of the non-payment of taxes for the years 1916 and 1917. A demurrer on behalf of defendants was filed, upon which case is now pending.

*Circuit Court Fifteenth Judicial Circuit of Florida, in and
for Broward County. In Chancery.*

*Everglades Sugar & Land Company,
Complainant,*

vs.

*Ernest Amos, as Comptroller,
et al., Defendants.*

This is a suit brought in an effort to cancel certain tax certificate numbered 2294 issued upon certain property in Broward County upon sale of such property because of the non-payment of taxes for the year 1917. A demurrer; also amended demurrer, was filed, upon which case is now pending.

*Circuit Court Fifteenth Judicial Circuit of Florida, in and
for Broward County. In Chancery.*

*Everglades Sugar & Land Co.,
Complainant,*

vs.

*Ernest Amos, as Comptroller,
et al., Defendants.*

This is a suit brought in an effort to cancel certain tax certificates issued upon certain property in Broward County upon sale of such property because of the non-payment of taxes for the years 1916 and 1917. A demurrer on behalf of defendants was filed, upon which case is now pending.

*Circuit Court Second Judicial Circuit of Florida, in and
for Leon County. In Chancery.*

*Florida East Coast Railway Company,
Complainant,*

vs.

*Ernest Amos, as Comptroller,
Defendant.*

This is an action brought by Complainant praying that the Comptroller be restrained and enjoined from issuing, serving or levying warrants of said Comptroller or any other writ, order or process, in attempting to collect from said Railway Company, certain taxes, etc. Answer to Bill of Complaint filed December 1, 1924.

*Circuit Court Fourth Judicial Circuit of Florida in and
Duval County. In Chancery.*

*W. L. Gradick,
Complainant,*

vs.

*Cary A. Hardee, Governor, et al.,
Defendants.*

This is an action brought seeking to restrain and enjoin the Defendants from enforcing certain rules and regulations governing the shipment and transportation of cattle through the County of Duval and other counties throughout the State in order to prevent and control the spread of contagious, infectious and communicable diseases of cattle and live stock. Answer on behalf of Defendant was filed to which Complaints except upon which suit is now pending.

*District Court of the United States for the Northern
District of Florida. In Chancery.*

*Gulf Refining Company,
Complainant.*

vs.

*Ernest Amos, as Comptroller,
et al., Defendants.*

This was an action brought seeking to enjoin the collection of the sum of \$10002.07 assessed by the Comptroller against the Complainant for default in payment of taxes on sales of gasoline made by it between April 13, 1922, and August 18, 1922, as required by Section 2 of Chapter 8411, Laws of Florida, Acts of 1921. Motion to Dismiss Bill was filed by Defendants, which Motion was denied and Defendants required to answer on or before the Rule Day in July, 1924. Defendants failing to answer as required, Final Decree and Perpetual Injunction was made and rendered by District Judge, Lake Jones, on the 28th day of July, 1924.

In the Supreme Court of Florida.

*The Guaranty Trust & Savings Bank,
Complainant,*

vs.

*United States Trust Company, et al.,
Defendants.*

This is a suit which was brought in the Circuit Court of Duval County, praying cancellation and rescission of a certain contract and agreement made July 15, 1922. Separate demurrers were filed. On July 31, 1924, an Order was made sustaining the demurrers, from which Order an appeal was taken to the Supreme Court on August 1, 1924. On October 7, 1924, Motion for Injunction was filed, upon which motion the case is now pending.

In the Supreme Court of Florida.

Harry Gwynn,
Appellant,

vs.

Cary A. Hardee, as Governor, et al.,
Appellees.

This is a case which was brought in the Circuit Court of Leon County praying for a temporary injunction to restrain the defendants, etc., from carrying out, performing, or in any manner acting under, or doing any matter or thing in pursuance of or in the furtherance, enforcement or performance of either or any of certain contracts which had been entered into between the State and certain publishing companies or of the proclamation of the Governor dated March 20, 1924, made pursuant to Section 14, Chapter 8500, Acts of 1921. Application for temporary injunction was argued orally, and briefs submitted. The Court on August 21, 1924, entered its order denying the injunction, from that order appeal was taken to the Supreme Court where the case is now pending.

*Circuit Court, Eleventh Judicial Circuit of Florida, in and
for Dade County. In Chancery.*

B. F. Hampton, et al.,
Complainants,

vs.

State Board of Education,
Defendants,

This is an injunction suit brought for specific performance of a certain contract alleged to have been made in 1893. Demurrer was filed by the Attorney General on behalf of Defendants, which demurrer was sustained. Case appealed to Supreme Court where now pending.

*Circuit Court Fourth Judicial Circuit of Florida, in and
for Duval County. In Chancery.*

*Iona Drainage District,
Complainant,*

vs.

*A. P. Anthony, as sole Receiver of
United States Trust Co., Ernest Amos,
as Comptroller and John C. Luning, as
State Treasurer, Defendants.*

This is a supplementary proceeding wherein Complainant filed petition alleging that it had deposited certain bonds to be held as a trust fund with the United States Trust Company, and that these bonds had been deposited by U. S. Trust Company in the office of the State Treasurer under the Trust Act; that title to such bonds had never passed to U. S. Trust Company, and that U. S. Trust Company was without authority to pledge such bonds in the office of the State Treasurer under the Trust Act. Answer was filed on behalf of John C. Luning on October 3, 1924.

*Circuit Court Fourth Judicial Circuit of Florida, in and
for Duval County. In Chancery.*

*J. C. Luning, as State Treasurer,
et al., Complainants,*

vs.

*The Guaranty Company, et al.,
Defendants.*

This is a suit brought for the purpose of foreclosing a mortgage given for the purpose of securing the payment of a certain promissory note executed and dated at Jacksonville, Florida, on the 23rd day of October, 1922, pay-

able one year after date to the order of the United States Trust Company, one of the Complainants, in the sum of \$34,500.00 with interest, etc., which note and mortgage was deposited in trust with J. C. Luning, State Treasurer.

Circuit Court Fourth Judicial Circuit of Florida, in and for Duval County. In Chancery.

National Surety Company,
Complainant,

vs.

Guaranty Trust and Savings Bank,
et al., Defendants.

This is a suit brought by Complainant where it prays to have an accounting taken of the amount due it under and by virtue of a certain written agreement dated March 1, 1922, by and between Guaranty Trust & Savings Bank and National Surety Company. Separate demurrers were filed on behalf of defendants upon which case is now pending.

In the Supreme Court of Florida.

T. L. Pelham,
Complainant,

vs.

H. Clay Crawford, Secretary of State
of the State of Florida, Defendant.

This was an action brought in the Circuit Court of Leon County to enjoin the defendant from executing any of his official duties touching the nomination and election of members of the House of Representatives and the Senate

of the State of Florida because of the alleged unconstitutionality of the Act of the Legislature of 1887, known as Chapter 3703. Application for restraining order was denied April 14, 1924. Case appealed to Supreme Court where it was ordered that the prayer of counsel for appellant for a temporary injunction be denied.

Circuit Court Second Judicial Circuit of Florida, in and for Franklin County. In Chancery.

*Geo. W. Saxon, and Saint George
Co-operative Colony, Complainant,*

vs.

*W. A. McRae, Commissioner of Agriculture,
et al., Defendants.*

This suit was brought for the purpose of enjoining and restraining the Defendants from leasing or in any way interfering with submerged lands of the Apalachicola Bay. A demurrer to the bill of complaint was filed, which demurrer was sustained. Case stands in statu quo awaiting decision from Supreme Court of the United States in the case of Apalachicola Land & Dev. Co., et al. v. W. A. McRae.

*Circuit Court, Suwannee County,
Florida. In Chancery.*

*Seaboard Air Line Railway,
Complainant,*

vs.

*Suwannee County, and G. W. Brannan,
et al., Defendants.*

This suit was instituted for the purpose of enjoining and restraining the defendants from using and occupying

for highway purposes, or otherwise, the Complainant's right of way. Pending a tentative settlement and adjustment of the question involved this suit stands in status quo.

Circuit Court, Second Judicial Circuit of Florida, in and for Leon County. In Chancery.

Seaboard Air Line Railway Company,
Complainant,

vs.

Ernest Amos, as Comptroller,
Defendant.

This is an action brought by Complainant praying that the Comptroller be restrained and enjoined from issuing, serving or levying warrants of said Comptroller or any other writ, order or process, in attempting to collect from said Railway Company, certain taxes, etc. Answer to Bill of Complaint filed December 1, 1924.

District Court of the United States for the Northern District of Florida. In Chancery.

Standard Oil Company,
Complainant,

vs.

Ernest Amos, as Comptroller,
et al., Defendants.

This was an action brought seeking to enjoin the collection of the sum of \$9766.04 assessed by the Comptroller against the Complainant for default in payment of taxes on sales of gasoline made by it between April 13, 1922, and August 18, 1922, as required by Section 2 of Chapter

8411, Laws of Florida, Acts of 1921. Motion to Dismiss Bill was filed by Defendants, which Motion was denied and Defendants required to answer on or before the Rule Day in July, 1924. Defendants failing to answer as required, Final Decree and Perpetual Injunction was made and rendered by District Judge, Lake Jones, on the 28th day of July, 1924.

*District Court of the United States for the Northern
District of Florida. In Chancery.*

*The Texas Company,
Complainant,*

vs.

*Ernest Amos, as Comptroller,
et al., Defendants.*

This was an action brought seeking to enjoin the collection of the sum of \$4631.10 assessed by the Comptroller against the Complainant for default in payment of taxes on sales of gasoline made by it between April 13, 1922, and August 18, 1922, as required by Section 2 of Chapter 8411, Laws of Florida, Acts of 1921. Motion to Dismiss Bill was filed by Defendants, which Motion was denied and Defendants required to answer on or before the Rule Day in July, 1924. Defendants failing to answer as required, Final Decree and Perpetual Injunction was made and rendered by District Judge, Lake Jones, on the 28th day of July, 1924.

In the Supreme Court of Florida.

State of Florida, ex rel.

Rivers Buford, Attorney General,

Appellants,

vs.

City of Tampa, et al.,

Appellees.

This was a suit instituted in the Circuit Court of Hillsborough County to test the authority of the City of Tampa to sell and dispose of to private interests to be used for private speculative purposes certain shallow bottoms in Hillsborough River and Hillsborough Bay. On May 3, 1924, Final Decree was rendered therein adjudging and decreeing that the equities were not with the complainants, but with the defendants, and ordering that the bill be dismissed. An Appeal was entered from the above order to the Supreme Court where the order of the lower court was affirmed. Appellants filed motion for re-hearing but motion was denied.

COMMON LAW.

In the Circuit Court, Leon County, Florida.

American Railway Express Co.,

Plaintiff,

vs.

Ernest Amos, as Comptroller,

Defendant.

This suit was instituted by the Plaintiff for the purpose of recovering the amount of license tax paid by the said Plaintiff for registering certain motor vehicles, which license was claimed by Plaintiff not to be required of such

vehicles, it having paid the tax provided by law (Chapter 6421, Acts of 1913), which relieved it from paying any further license tax. A demurrer to the declaration was filed which demurrer was sustained. No further action taken.

*Circuit Court Eighth Judicial Circuit of Florida, in and
for Alachua County.*

*King Lumber Co.,
Plaintiff,*

vs.

*State Board of Control,
Defendant.*

This is a suit brought to recover a balance alleged to be due by the defendant to plaintiff on account of a contract for the construction of a building by plaintiff for defendant on the grounds of the University of Florida at Gainesville. Demurrer to plaintiff's replication was overruled, and case appealed to Supreme Court where pending.

*Circuit Court Second Judicial Circuit of Florida, in and
for Leon County.*

*Park Trammell, et al., as the Board of
Commissioners of State Institutions,
Plaintiffs,*

vs.

*DeLeon Naval Stores Company,
a Corporation, et al., Defendants.*

This is a suit brought against the DeLeon Naval Stores Company, a corporation, lessee of State prisoners, and its bondsmen for a balance due by it on account of its contract with the Board of Commissioners of State In-

stitutions for the lease of such prisoners. The amount due was \$6,060.74. The executors of the estate of J. B. Conrad, deceased, one of the sureties on the bond of this defendant, have paid to the Board the sum of \$2,000.00, the amount of the obligation of this decedent on the bond. The case is still pending before the court.

Circuit Court Liberty County, Florida.

A. H. Wolyn,
Plaintiff,

vs.

Apalachicola Northern Railroad Co.,
et al., Defendants.

This is a suit brought to recover damages alleged to have been sustained by failure of Defendants to place cars for the shipment of certain Japanese Seed Cane of the value of \$1,694.59, with interest from April 1, 1921, and \$11,260.00, with interest from April 1, 1922. Pending on demurrer to declaration.

MANDAMUS.

In the Supreme Court.

State ex rel. Rivers Buford,
Attorney General, Relator,

vs.

W. Rogers Watkins, as Clerk of
the Circuit Court of Hillsborough
County, Respondent.

This was a suit asking for a writ of mandamus to be directed to W. Rogers Watkins, the Respondent herein,

requiring him to render to the Board of County Commissioners a sworn statement showing in detail the expense of his office, fees and commissions collected, and the gross and net income thereof for the year ending December 31, 1922, under the provisions of Chapter 8497, Laws of Florida, Acts of 1921. The Return challenged the constitutionality of the Act. The Supreme Court held the act to be invalid and denied a peremptory writ. Motion for Rehearing was filed which was granted, and thereupon the Court awarded a Peremptory Writ of Mandamus.

Circuit Court Second Judicial Circuit of Florida, in and for Leon County.

State of Florida, ex rel.

W. H. Cox, Relator.

vs.

*Ernest Amos, as Comptroller,
Respondent.*

This was a case brought by the Relator seeking mandamus to compe Respondent to pay out of the 1921 appropriation for the State Board of Health a balance or balances claimed to be due said Relator for traveling expenses, etc. An alternative writ of mandamus was issued, and motion made by Respondent to quash the writ. No action taken by court.

In the Supreme Court of Florida.

*State ex rel. R. R. Riley,
Relator,*

vs.

*W. S. Cawthon, State Superintendent
of Public Instruction, Respondent.*

Petition for mandamus was filed in this case praying for an alternative writ of mandamus against the Respon-

dent thereby compelling him to issue to Relator a life certificate as provided by Chapter 9122, Acts of 1923. Alternative writ issued. Return to alternative writ was filed by Respondent, whereupon Relator moved that Peremptory Writ issue, notwithstanding the return, upon which Motion the case is now pending.

*Circuit Court Second Judicial Circuit of Florida, in and
for Leon County.*

*State ex rel. Ruth Sandlin,
a Minor by Wm. Hodges, her
next friend, Relator,*

vs.

*State Board of Education,
Respondent.*

Petition for writ of mandamus was filed in this case praying that Relator be awarded a scholarship to the Florida State College for Women for the year 1924 from Hamilton County, in accordance with Chapter 9134, Acts of 1923, Laws of Florida. Alternative Writ issued. Motion to quash alternative writ was filed by Respondent upon which motion suit is now pending.

BOND ESTREATURE.

In the Supreme Court of Florida.

*Allen Stirling, et al.,
Plaintiff in Error,*

vs.

*State of Florida,
Defendant in Error.*

This is a proceeding by writ of error to review the judgment of the Court of Record of Escambia County, forfeit-

ing a certain cash bond in the sum of \$500.00, given to secure the appearance of plaintiff in error at the January term of the said court to answer certain criminal charges then pending against him. Judgment was reversed January 24, 1923.

QUO WARRANTO.

Authority was granted by the Attorney General to the parties whose names appear below to institute proceedings in *Quo Warranto*. Statement of the purpose of the suit is given in each case.

W. B. Crawford, Orlando, Fla.

January 8, 1923.

This was a suit brought for the purpose of testing the validity of the Charter of the City of Orlando—this charter being embodied in Chapter 6739, Laws of 1913.

W. B. Dickenson, Tampa, Fla.

February 9, 1923.

This proceeding was instituted in Polk County and involved the question of the legality of an Incorporation for Profit, known as the Gentry-Futch Company.

C. E. Spear, St. Petersburg, Fla.

March 19, 1923.

This was an action brought to test certain rights of the Grace Baptist Church of St. Petersburg, Pinellas County.

Robert H. Anderson, Jacksonville, Fla

May 8, 1923.

The purpose for bringing this suit was to have declared a nuisance, and removed, certain sign boards which obstructed the view of persons travelling upon a certain highway in Duval County.

G. B. Wells, Plant City, Fla.

June 4, 1923.

This proceeding was for the purpose of testing the legality of the incorporation of the town of Forest Lake, Hillsborough County, Florida.

John T. G. Crawford, Jacksonville, Fla.

July 27, 1923.

This suit was brought for the purpose of testing the validity of Chapter 9274, Laws of Florida, Acts of 1923, creating a County Welfare Board.

John T. G. Crawford, Jacksonville, Fla.

August 4, 1923.

This proceeding was brought for the purpose of testing the validity of a local law of Duval County—Chapter 8034, Acts of 1919, authorizing County Commissioners to employ a County Detective.

A. H. Odom, Palatka, Fla.

August 6, 1923.

This suit was to test the Constitutionality of Chapter 9582, Laws of 1923, such Act creating and defining the powers of Trustees for Special Road and Bridge District No. 6 of Putnam County.

Fred Cubberly, Gainesville, Fla.

September 14, 1923.

This was an action brought for the purpose of testing the validity of an alleged election of certain Special Tax School District Trustees in Alachau County.

Pat Whitaker, Tampa, Fla.

December 31, 1923.

This proceeding was for the purpose of enjoining the City of Tampa from using or permitting the use of DeSoto Park as a camping site for tourists and transients or for any other purpose other than as a public park and pleasure ground for the residents and citizens of Tampa.

H. S. Hampton, Tampa, Fla.

April 17, 1924.

Authority granted in this proceeding for the purpose of testing the validity of the creation of and the assessment in Dover Drainage District, Hillsborough County.

Horace D. Gordon, Jr., Tampa, Fla.

June 12, 1924.

This is a suit brought for the purpose of cancelling the Charter of American Life Insurance Company of Florida, this Company having ceased to do business in this State.

Watson & Pasco, Pensacola, Fla.

June 25, 1924.

This action was brought to contest the validity of an election held on December 15, 1923, for the purpose of consolidating Special Tax Districts No. 2, 3, 11 and 13, Santa Rosa County, Florida.

Fred Botts, Miami, Fla.

July 26, 1924.

This proceedings was for the purpose of testing the right of the Respondent to hold and exercise the office of Director in the Florida Cities Finance Company, a Florida Corporation.

James M. Carson, Miami, Fla.

September 1, 1924.

This was a suit brought for the purpose of testing the validity of the attempted incorporation of the Town of Buena Vista, Dade County.

Wm. M. Taliaferro, Tampa, Fla.

October 17, 1924.

This proceeding was for the purpose of testing the constitutionality of Chapter 9686, Laws of Florida, Acts of 1923.

Mabry, Reaves & Carlton, Tampa, Fla.

December 6, 1924.

This action was brought for the purpose of testing the validity of Section 1918, R. G. S., *in re* the annexation of certain territory to the City of Clearwater, Pinellas County.

J. Asakiah Williams, Gainesville, Fla.

December 11, 1924.

This was a case brought for the purpose of testing the validity of Chapter 9504, Special Acts of 1923, relating to hunting in Levy County.

Mabry, Reaves & Carlton, Tampa, Fla.

December 20, 1923.

This was a proceeding against the Pinellas County Power Company, the purpose of which was to test the validity of a franchise granted by the Town of St. Petersburg in 1897 to one F. A. Davis, under whom the above named company claimed.

R. B. Huffaker, Bartow, Fla.

December 20, 1924.

This was a proceeding brought for the purpose of testing the legality of the organization of the Municipality of West Auburndale, Polk County.

James F. Glenn, Tampa, Fla.

_____, 1924.

The purpose of this suit was to test the constitutionality of Chapter 9686, Laws of Florida, Acts of 1923, incorporating Bellair Heights, Pinellas County.

James Glenn, Tampa, Fla.

This action was brought for the purpose of testing the validity of Chapter 8541, Acts of 1921, as amended by Chapter 9314, Acts of 1923, Laws of Florida, creating the office of Traffic Officer, Hillsborough County, Florida.

TABULATED REPORT OF CRIMINAL CASES HANDLED BY THE ATTORNEY GENERAL IN
WHICH OPINIONS WERE FILED BY THE SUPREME COURT DURING
THE YEARS 1923 AND 1924.

CASES DISPOSED OF DURING JANUARY TERM, 1923, AND REPORTED IN EIGHTY-
FIFTH FLORIDA REPORT.

Name of Offender	Offense	County	Court	Disposition
Anderson, Harrell	Murder 1st degree.....	Hernando	Circuit	Dismissed
Armstrong, S. B.....	Forfeiture bond	Duval	Circuit	Reversed
Augusta, Nealey	Murder 1st degree.....	Volusia	Circuit	Affirmed
Augusta, Nealey	Murder 1st degree.....	Volsia	Circuit	Affirmed
Burch, Flora	Murder 1st degree.....	Manatee	Circuit	Reversed
Charmel, Mathew	Larceny	Santa Rosa	Circuit	Affirmed
Chesser, W. O.....	Murder 2nd degree.....	St. Johns	Circuit	Affirmed
Cooley, G. E.....	Aggravated assault	Jackson	Circuit	Affirmed
Cotton, Herbert	Murder 1st degree.....	Escambia	Circuit	Reversed
Crawford, N. S.....	Grand embezzlement	Duval	Criminal	Reversed
Cunningham, Jos.	Rec. stolen property.....	Dade	Criminal	Affirmed
Davis, Rosecoe	Murder 1st degree.....	Alachua	Circuit	Affirmed
Folks, Floyd	Manslaughter	Levy	Circuit	Affirmed
Glisson, Chas.	Breaking and entering.....	Bay	Circuit	Affirmed
Grooms, W. M.....	Larceny	Manatee	Circuit	Affirmed
Hammell, Dave	Certiorari	Lee	Circuit	Denied

CASES DISPOSED OF DURING JANUARY TERM, 1923, AND REPORTED IN EIGHTY-
FIFTH FLORIDA REPORT.—CONTINUED

Name of Offender	Offense	County	Court	Disposition
Hunter, John	Carnal intercourse	Jackson	Circuit	Affirmed
Hysler, Thos. W.....	Murder 1st degree.....	Duval	Circuit	Affirmed
Joyner, Robt.	Murder 1st degree.....	Duval	Circuit	Affirmed
King, John, et al.....	Confidence game	Orange	Circuit	Affirmed
McQuagge, J. N.....	Trespass	Jackson	Circuit	Dismissed
Meier, Wm.	Manslaughter	Duval	Criminal	Affirmed
				Re-hearing
Moskovitz, T. H.....	Grand larceny	Duval	Criminal	Dismissed
Pratt, C. L.	Carnal intercourse	Escambia	of Rec	Affirmed
Revell, S. I.	Embezzlement	Liberty	Circuit	Affirmed
Segui, E. A.....	Uttering worthless check.....	Duval	Criminal	Dismissed
Spooner, W. C.	Habeas corpus	Duval	Circuit	Reversed
Steele, P. M.	Forgery	Okaloosa	Circuit	Affirmed
Streety, Henry	Murder 2nd degree.....	Columbia	Circuit	Affirmed
Thomas, Bert M.....	Murder 2nd degree.....	Leon	Circuit	Affirmed
Thompson, Everett	Father bastard child.....	Manatee	Circuit	Reversed
Timmons, Newton	Manslaughter	Levy	Circuit	Dismissed
Watson, Joseph	Murder 1st degree.....	Marion	Circuit	Reversed

Westlake, Luella	Habeas corpus	Duval	Circuit	Reversed
Whitfield, Homer E.....	Living in open adultery.....	Lake	Circuit	Affirmed
Williamson, Johnnie	Manslaughter	Columbia	Circuit	Reversed
Williamson, Chas.		Calhoun	Circuit	Dismissed
Young, W. H.....	Manslaughter	Hillsboro	Circuit	Reversed

CASES DISPOSED OF DURING JUNE TERM, 1923, AND REPORTED IN EIGHTY-SIXTH FLORIDA REPORT.

Name of Offender	Offense	County	Court	Disposition
Akin, J. W.....	Forgery	Marion	Circuit	Affirmed—Re-hearing granted
Akin, J. W.....	Forgery	Marion	Circuit	Reversed
Bohannon, Oscar	Carnal intercourse	Santa Rosa	Circuit	Affirmed
Branham, Neil	Manslaughter	Duval	Circuit	Affirmed
Cason, Allen	Assault with intent to kill.....	Volusia	Circuit	Affirmed
Clark, C.	Arson	Orange	Criminal	Reversed
Crawford, N. S.....	Shooting into building.....	Duval	Criminal	Affirmed
Davis, Chas.	Murder 2d degree.....	Okaloosa	Circuit	Affirmed
Drawdy, Dozier	Habeas corpus	Duval	Circuit	Affirmed—Re-hearing granted
Drawdy, G. W.....	Habeas corpus	Duval	Circuit	Affirmed—Re-hearing granted
Ellis, Hallie	Manslaughter	Hillsborough	Circuit	Reversed
Ellis, Granville	Manslaughter	Hillsborough	Circuit	Reversed
Ellis, Leman	Grand larceny	Hillsborough	Criminal	Affirmed
Felder, Elmer ,et al...	Larceny	Herando	Circuit	Dismissed
Flowers, Catherine ...	Habeas corpus	Duval	Circuit	Dismissed
Flucas, Jack		Dade	Criminal	Dismissed
Flynn, J. G.....	Stealing auto	Polk	Circuit	Reversed

Frink, James		Dade	Criminal	Dismissed
Getzen, T. H.....	Stealing auto	Lake	Circuit	Reversed
Goolsby, Preston	Larceny of steer.....	Lake	Circuit	Affirmed
Gordon, A. P.....	Selling liquor	Orange	Criminal	Reversed
Granquist,	Breaking and entering.....	Pinellas	Circuit	Affirmed
Gustine, ReLoy	Attempted grand larceny	Hillsborough	Criminal	Reversed
Hansen, A. J.....	Carnal intercourse	Duval	Criminal	Dismissed
Harris, E. J.....	Habeas corpus	Dade	Circuit	Affirmed
Hatcher, C. D.....	Habeas corpus	Leon	Supreme	Petitioner discharged
Hughes, Ralph	Breaking and entering.....	Marion	Circuit	Affirmed
Jacques, Harry	Grand larceny	Walton	Circuit	Affirmed
James, General	Desertion	Osceola	Circuit	Dismissed
Johnson, Henry	Manslaughter		Circuit	Appeal abandoned
Kirkland, J. D.....	Embezzlement	Jackson	Circuit	Affirmed
Kirkland, J. D.....	Malpractice in office.....	Jackson	Circuit	Affirmed
Knowles, Geo.	Rec. stolen goods	DeSoto	Criminal	Reversed
Lett, T. M.....	Habeas corpus	Dade	Circuit	Dismissed
Luke, Joe	Manslaughter	Bradford	Circuit	Affirmed
McDaniels, E. B.....	Habeas corpus	Jackson	Circuit	Bail allowed
Merritt, James				
and Pridgeon	Murder 1st degree.....	Sumter	Circuit	Dismissed
Miller, John	Incest	Taylor	Circuit	Dismissed
Nickles, Aubrey Lee...	Rape	Volusia	Circuit	Affirmed—Re-hear- ing granted
Overstreet, Paul	Habeas corpus	Pasco	Circuit	Bail granted

CASES DISPOSED OF DURING JUNE ,TERM 1923, AND REPORTED IN EIGHTY-
SIXTH FLORIDA REPORT.—CONTINUED.

Name of Offender	Offense	County	Court	Disposition
Preston, Frank	Manslaughter	Highlands	Circuit	Affirmed
Riggs, F. A.....	Forgery	Hardee	Circuit	Dismissed
Smith, W. J.....	False pretense	Jackson	Circuit	Reversed
Stillman, Jack	Habeas corpus	Duval	Circuit	Affirmed—Re-hear- ing granted
Taylor, Samuel	Murder 2d degree.....	Dade	Circuit	Affirmed
Tucker, Park	Larceny	Orange	Criminal	Affirmed
Wade, Powell	Manslaughter	Madison	Circuit	Affirmed
Washington, R., et al.	Murder 1st degree.....	Palm Beach	Circuit	Affirmed
Washington, Abe	Murder 1st degree.....	Duval	Circuit	Affirmed
Whitten, Burnard	Murder 1st degree.. ..	Hardee	Circuit	Affirmed—Apl. U. S. Sup. Ct.
Wilson, Jessie	Murder 1st degree.....	Herando	Circuit	Reversed
Young, Sam	Murder 2d degree.....	Bay	Circuit	Dismissed

CASES DISPOSED OF DURING JANUARY TERM, 1924, AND REPORTED IN EIGHTY-
SEVENTH FLORIDA REPORT.

Name of Offender	Offense	County	Court	Disposition
Avant, Tom and Landford, Tom.....	Certiorari	DeSoto	Circuit	Denied
Blocker, L. S.....	Murder 1st degree.....	Dade	Circuit	Reversed
Bryant, Coy, et al.....	Wilfully killing animal.....	Franklin	Circuit	Affirmed
Capps, Geo.	Incest	Calhoun	Circuit	Affirmed
Cates, Clement	Embezzlement	Duval	Circuit	Dismissed
Cox, Geo., et al.....	Arson	DeSoto	Circuit	Reversed
Cross, Annie	Habeas corpus	Nassau	Circuit	Affirmed
Cruce, Jack	Murder 2d degree.....	Taylor	Circuit	Affirmed
Davis, Harold	Rec. stolen property.....	Polk	Circuit	Affirmed
Donahue, E. B.....		Duval	Circuit	Dismissed
Drawdy, Dozier	Habeas corpus	Duval	Circuit	Affirmed
Drawdy, G. W.....	Habeas corpus	Duval	Circuit	Affirmed
Frazier, D. A.....	Drunkenness	Walton	Circuit	Reversed
Fortner, Park, et al.....	Shooting into vehicle.....	Suwanee	Circuit	Affirmed
Goodbread, Monroe	Carnal intercourse	Duval	Criminal	Dismissed
Grantham, W. H.....	Habeas corpus	Manatee	Circuit	Bail allowed
Hall, A. L.....	Murder 2d degree	Calhoun	Circuit	Dismissed
Higginbotham, T. W.....	Murder	Columbia	Circuit	Reversed
Holton, Jim	Murder 2d degree.....	Madison	Circuit	Reversed

CASES DISPOSED OF DURING JANUARY TERM, 1924, AND REPORTED IN EIGHTY-SEVENTH FLORIDA REPORT.—CONTINUED.

Name of Offender	Offense	County	Court	Disposition
Jackson, Ida Bell.....	Resisting officer	Orange	Circuit	Reversed
Kirkland, N.	Desertion	Washington	Circuit	Affirmed
Lewis, A. E.....	Prostitution, etc.....	Dade	Criminal	Reversed
McClay, Charlie	Murder 2d degree.....	Franklin	Circuit	Dismissed
McGowan, Leo	Murder	Columbia	Circuit	Dismissed
McLeod, A.	Seining out of season.....	Polk	Circuit	Affirmed
Martin, J. A.	Murder	Walton	Circuit	Affirmed
Meier, Wm.	Manslaughter	Duval	Criminal	Affirmed
Messer, L. L.....	Habeas corpus	Jackson	Circuit	Discharged
Moody, R. L.....	Habeas corpus	Jackson	Circuit	Reversed
Munoz, John	Grand embezzlement	Duval	Criminal	Reversed
Nickels, Aubrey Lee.....	Rape	Volusia	Circuit	Reversed
Osborne, Joe	Murder 1st degree.....	Volusia	Circuit	Reversed
Peterson, Joe	Murder 1st degree.....	Duval	Circuit	Dismissed
Rowe, Wm. and Allen.....	Murder 1st degree.....	Nassau	Circuit	Reversed
Scott, Jessie	Bribery	Columbia	Circuit	Affirmed
Scott, Henry and Adams, Ben..		Columbia	Circuit	Dismissed
Scott, Henry and Adams, Ben..		Columbia	Circuit	Dismissed
Smith, Garfield	Mayhem	Volusia	Circuit	Reversed

Stillman, Jack	Habeas corpus	Duval	Circuit	Affirmed
Stirling, Allen, et al.....	Bond forfeiture	Escambia	of Record	Reversed
Thompson, J. E.....	Maintaining gambling table.....	Volusia	Circuit	Reversed
Turner, Neal	Murder 2d degree.....	Osceola	Circuit	Reversed
Tyson, J. G.....	Carnal intercourse	Duval	Criminal	Reversed
Ward, Walter and Rogers, Geo..		Alachua	Circuit	Dismissed
Winton, Robt.	Violation Sec. 3304 G. S.....	Dade	Criminal	Reversed

CASES DISPOSED OF DURING JUNE TERM, 1924, AND REPORTED IN EIGHTY-EIGHTH
FLORIDA REPORT.

Name of Offense	Offense	County	Court	Disposition
Adkins, C. F.....	Selling liquor	Walton	Circuit	Affirmed
Alderman, J. H.....	Grand larceny	Lee	Circuit	Affirmed
Ammons, Tom	Murder 1st degree.....	Broward	Circuit	Affirmed
Anderson, Norman	Murder 2d degree.....	Hillsborough	Circuit	Affirmed
Atkinson, Wm. C.....		Alachua	Circuit	Dismissed
Benson, John	Possessing intoxicating liquors..	St. Lucie	Circuit	Reversed
Blackmon, Henry	Murder 1st degree.....	Suwannee	Circuit	Affirmed
Braswell, W. R.....	Adultery	DeSoto	Circuit	Reversed
Britt, B.	Murder 1st degree.....	Sarasota	Circuit	Affirmed
Brown, Chas.	Murder	Volusia	Circuit	Reversed
Campbell, W. E.....	Habeas corpus	Dade	Circuit	Affirmed
Carnley, Ed	Assault and battery.....	Escambia	of Record	Affirmed
Clark, Chas.	Manslaughter	Suwannee	Circuit	Affirmed
Davis, Tom		Bradford	Circuit	Dismissed
Denmark, C. L.	Manslaughter	Columbia	Circuit	Affirmed
Farley, Frank	Murder 1st degree.....	Hillsborough	Circuit	Affirmed
Fowler, W. J.....	Assault and battery.....	Walton	Circuit	Affirmed
Garcia, Bennie		Hillsborough	Criminal	Dismissed
Gibson, Alex J.....		Dade	Criminal	Dismissed
Goodman, Frank	Murder 1st degree.....	Seminole	Circuit	Affirmed

Hall, Roland	Murder 2d degree	Bay	Circuit	Reversed
Johnson, Lucy	Violating liquor law	Pinellas	Circuit	Reversed
Johnson, Neal	Murder 1st degree	Madison	Circuit	Reversed
Kuney, Clark G.	Habeas corpus	DeSoto	Circuit	Reversed
Latham, O. E.	Burning property	Washington	Circuit	Affirmed
Lee, Warren C.		Duval	Circuit	Dismissed
Lindsey, S.	Murder 1st degree	Madison	Circuit	Affirmed
Lockmiller, Marion	Habeas corpus	Broward	Circuit	Petitioner Discharged
McLendon, Elmore	Grand larceny	Duval	Criminal	Dismissed
Nesle, Chas. H.		Palm Beach	Circuit	Dismissed
Padget, Arthur	Uttering forged instrument	Walton	Circuit	Dismissed
Payne, King		Columbia	Circuit	Dismissed
Phillips, A. S.	Manslaughter	Hamilton	Circuit	Affirmed
Pitts, Charley	Murder	Calhoun	Circuit	Affirmed
Powell, J. L.	Murder 2d degree	Leon	Circuit	Affirmed
Russell, John	Murder 2d degree	Hillsborough	Circuit	Affirmed
Sams, F. M.	Habeas corpus	Volusia	Circuit	Affirmed
Scherrer, T. W.	Larceny	Hillsborough	Criminal	Dismissed
Shannon, Arthur	Murder 2d degree	Marion	Circuit	Dismissed
Shaw, Joe	Manslaughter	Jackson	Circuit	Affirmed
Smithie, Bennie	Manslaughter	LaFayette	Circuit	Affirmed
Tedder, Rhoda	Murder 1st degree	Volusia	Circuit	Reversed
Turner, Reuben	Robbery	Suwanee	Circuit	Affirmed
Young, Tom, et al.	Assault to rape	Orange	Criminal	Affirmed

OFFICIAL OPINIONS

The following are only a few of the Official Opinions such as may be of interest to the public generally.

COURTS—SUSPENSION OF SENTENCE.

Tallahassee, Fla., January 26, 1923.

*Hon. Cary A. Hardee,
Governor,
Tallahassee, Fla.*

Dear Sir:

Herewith is the letter addressed to you by the Sheriff and County Prosecuting Attorney of Lee County, under date of 19th instant, and which reads as follows:

“About two months ago, one Chester Flint, along with two other men were caught by the Sheriff in the act of operating a moonshine still, were arrested and plead guilty to the charge of possessing a stilling apparatus, and were sentenced to pay a fine of \$500.00 or serve six months in the County jail at hard labor.

“Chester Flint was sent to the County Road and after serving about ten days, made his escape and is at present living within a few miles of Fort Myers. Since this prisoner made his escape the County Judge, N. C. Stout, has “suspended” his fine and imprisonment.

“We, as officers of the County Judge’s Court, think this action on the part of the County Judge was not justified, and also think that he has no authority under the law, after once imposing a sentence to change it, or suspend it.

"The Sheriff probably has the authority to arrest this man as an escaped convict and take him back to the road, but under the circumstances, desires an expression from you; and we will await your orders."

In compliance with your request of this date I have the honor to advise you that under the circumstances stated in said letter the attempted or purported suspension of sentence was and is absolutely void and of no effect.

"The right of a trial court to suspend sentence is recognized, but it has no power to suspend the execution of a sentence already lawfully imposed, except for the purpose of giving effect to an appeal, or where cumulative sentences are imposed, and in some cases of necessity or emergency."

Tanner v. Wiggins, 54 Fla. 203, 45 So. 459;

Pensacola Lodge, etc., v. State, 74 Fla. 498, 77 So. 613.

In the case mentioned in said letter the escaped convict should be arrested and held as authorized by the original judgment and the mittimus thereon.

The subsequent attempted "suspension" of the judgment, being without any legal effect whatever, should simply be ignored.

Yours very truly,
RIVERS BUFORD.

COURTS—JUSTICE OF PEACE—JURISDICTION.

Tallahassee, Fla., February 9, 1923.

*Hon. Cary A. Hardee,
Governor,
Tallahassee, Fla.*

Dear Sir:

Replying to your request that I advise you whether or not a Justice of the Peace and a Constable located in a

County where a Criminal Court of Record is established have lawful authority to dismiss a case against a person charged with committing a misdemeanor upon the payment of costs by such person, I beg to say:

Under the conditions above stated, such conduct by a Constable and Justice of the Peace is without authority of law and would constitute malpractice in office. In Counties where a Criminal Court of Record is operated, a Justice of the Peace is authorized to issue warrants upon proper complaints being filed before him for the arrest of persons charged with misdemeanors, and upon such person being brought before him he is authorized to hear the evidence which may be adduced for and against the accused. If the evidence is sufficient to show probable guilt, it is the duty of the Justice of the Peace to bind such person over to await the action of the higher court,—and if such evidence is insufficient, it is then the duty of the Justice of the Peace to then discharge the defendant without cost.

Yours very truly,
 RIVERS BUFORD,
 Attorney General.

LEGISLATORS—APPOINTMENT TO OFFICE.

Tallaassee, Fla., June 19, 1923.

Hon. Cary A. Hardee,
Governor,
Tallahassee, Fla.

Dear Sir:

I have your request that I advise you whether or not you may appoint as a member of the State Live Stock Sanitary Board a person who was a member of the Legislature of the session of 1923, at which session the law was

passed creating such Board and authorizing the appointment of members thereof.

This question was definitely presented to the Supreme Court of the State of Florida and settled by an advisory opinion rendered by that Court to Hon. Napoleon B. Broward, Governor of Florida, at the January Term, 1905, which opinion is reported in 49 Fla. Page 269.

Under the authority of the decision above referred to I respectfully advise you that the provisions of Section 5 of Article III of the Constitution precludes you from appointing as a member of the State Live Stock Sanitary Board a Senator or Member of the House of Representatives, who served as such in the Florida Legislature of the session of 1923, when the law creating the State Live Stock Sanitary Board and authorizing the appointment thereof was enacted.

Yours very truly,

RIVERS BUFORD,

Attorney General.

COURTS—CIRCUIT JUDGE—APPOINTMENT.

Tallahassee, Fla., July 23, 1923.

Hon. Cary A. Hardee,
Governor,
Tallahassee, Fla.

Dear Sir:

Replying to your request that I advise you in regard to the question raised by Hon. John H. Carter of Marianna, in his letter of July 14th to you, with reference to the commission issued to a Circuit Judge, I beg to say:

In my opinion the commission which you have issued in this case is proper, and in my opinion it is entirely con-

sistent with Section 33 of Article 5 of the Constitution of Florida.

The appointment of a Circuit Judge for a full or unexpired term requires the joint action of the Governor and the Senate, therefore, if the Senate were in session and a vacancy should occur in the office of Circuit Judge it would be the duty of the Governor to submit to the Senate for approval and appointment of some person to fill the unexpired term under the provisions of Section 33, Article 5, but if the Senate is not in session then the Governor is only authorized to appoint until the end of the next ensuing session of the Senate unless an appointment should be sooner made and confirmed, or consented to, by the Senate. The Senate upon convening may, for any cause sufficient unto itself, refuse to approve or confirm an appointment made by the Governor for an unexpired term.

It appears very clear to me that it was the intention of the framers of the Constitution by inserting the provisions of Section 33 of Article 5 in that document to thereby limit the period for which an appointment of Judge could be made by the Governor, with the approval of the Senate, to the balance of the unexpired term of the former incumbent of such office.

Were it not for the provisions of this Section, then in the instant case the Governor, with the approval of the Senate, could in 1925 appoint a Judge of the Fourteenth Judicial Circuit of Florida for a term of six years from the date of such appointment. The purpose of Section 33 is only to prohibit such course being pursued in like cases.

I return letter from Mr. Carter.

Yours very truly,

RIVERS BUFORD,

Attorney General.

CONVICTS—RECAPTURE AND REWARD.

Tallahassee, Fla., October 10, 1923.

*Hon. Cary A. Hardee,
Governor,
Tallahassee, Fla.*

Dear Sir:

I have your request of the 8th instant that I advise you whether or not, in my opinion, Mr. W. C. Boring is entitled to receive reward for the capture of one Dave Williams, whom he claims to have killed while the said Dave Williams was resisting arrest.

The offer for reward in this case is in the usual form and proposes to pay the reward for the capture and return of the prisoner to the State Prison authorities.

The usual rule is that unless the offer of reward specifically states that the reward will be paid for the capture of the accused either dead or alive, it will only be paid upon the delivery of the prisoner to the authorities alive.

I can understand that Mr. Boring feels that he should have the reward in this case and if we were acting as individuals handling our own money, it is probable that we could see the matter from his viewpoint and very willingly pay him the reward, but as a Board of Commissioners of State Institutions we are acting for the public and we have no right to pay out public money except as authorized by law. I do not think we are authorized to pay this.

Yours very truly,
RIVERS BUFORD,
Attorney General.

FOODS AND DRUGS—SEIZURE.

Tallahassee, Fla., October 12, 1923.

*Hon. Cary A. Hardee,
Governor,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of October 12th I beg to say in my opinion the matter referred to in your letter is controlled by Section 2036, Revised General Statutes of Florida.

This Section provides among other things that: "the State Chemist shall certify certain facts to the Commissioner of Agriculture, who shall cause the goods so certified as adulterous or misbranded to be seized by the Sheriff of the County in which they are found, and shall cause notice thereof to be given to the party from whom such samples were obtained, etc." Provision is also made that the Commissioner of Agriculture, after a hearing before the Commissioner of Agriculture and the Attorney General, shall certify the facts to the proper prosecuting officer.

Under the provisions of this Section, it is the duty of the Commissioner of Agriculture to prepare and file with the Sheriff of the County in which misbranded goods are found, an information under the seal of his office, describing the goods, the date of the examination, the manner in which the law is violated, the name of the party in whose possession the goods have been found, the location of the goods, and thereupon ordering the Sheriff to seize such goods and hold the same subject to order of Court. It is further the duty of the Commissioner of Agriculture to certify the facts to the proper prosecuting officer of the Court having jurisdiction in the premises and it thereupon becomes the duty of such prosecuting officer to

prosecute the offender and if such offender is convicted, it becomes the duty of the Court to make an order for the disposition of the property involved.

I do not think the Sheriff is warranted in making a seizure upon the verbal request of an Inspector, or upon a telegram or letter from the office of the Commissioner of Agriculture, but the Sheriff should have in his possession a formal charge signed by the Commissioner of Agriculture under the seal of his office, with directions to seize certain property, which from the information contained in the order can be definitely located and segregated by him.

When the Commissioner of Agriculture has submitted such information to the Sheriff and made formal demand for the seizure, then the Sheriff must act.

There does not appear to be any specific provision made for the payment of the Sheriff's fees in the event costs should be adjudged against the Department of Agriculture. The law, however, provides for the sale of certain confiscated property under order of Court and, it is my opinion, that any lawful expense incurred in the administration of the Act may be paid from the fund thus arising. I think the Sheriff is entitled to the same fees as he would be for making levies under other process.

Under certain conditions misbranded and adulterated foods may be seized by an Inspector, and when so seized by an Inspector, the Inspector is directed by law to turn the same over to the custody of the Sheriff of the County, and in such case it is the duty of the Sheriff to receive the goods from the Inspector and to hold the same subject to the order of the Commissioner of Agriculture, and in such cases it is the duty of the Commissioner of Agriculture to immediately make an order authorizing the Sheriff to retain possession of the property until it is finally disposed of.

Yours very truly,
RIVERS BUFORD,
Attorney General.

STATE LAND—CLEARANCE OF TITLE.

Tallahassee, Fla., November 27, 1923.

*Hon. Cary A. Hardee,
Governor,
Tallahassee, Fla.*

Dear Sir:

I have your letter of the 21st instant transmitting letters from J. Clifford R. Foster, Adjutant General, in regard to conveyance of lands for Armory Area at Plant City in Hillsborough County, Florida.

It is my opinion that the position taken by the Judge Advocate is correct and that the Armory Board is without authority to re-convey the title, and I am further of the opinion that a conveyance made by such Board would be a nullity and would not accomplish the purpose of clarifying the record and thereby removing the cloud from title on the lands which were described in the original deed mentioned in General Foster's letter.

I am of the opinion that an amendatory deed executed by the Board of County Commissioners of Hillsborough County would not have the effect of clarifying the record, nor of removing the cloud from title, which is the object sought by all parties to be accomplished.

It appears from the subsequent letter from General Foster, under date of November 22, 1923, that the original deed is made to the State of Florida and this precludes the clearing of the title by order of Court.

It is my opinion that the best course to pursue in this matter and one which I think will satisfy all parties is for you, as Governor and Ex Officio Commander in Chief of the Military Forces of the State, to execute a Quit Claim Deed relinquishing any claim of the State to the lands described, and when the Legislature convenes for an Act to be passed validating this action, or an Act passed

authorizing an additional Quit Claim Deed to effect the desired property.

With this in mind I am handing you herewith a draft of a Quit Claim Deed, which I think will satisfy all parties when executed by you.

Yours very truly,
RIVERS BUFORD,
Attorney General.

BOND TRUSTEES—COMMISSION.

Tallahassee, Fla., December 11, 1923.

*Hon. Cary A. Hardee,
Governor,
Tallahassee, Fla.*

Dear Sir:

I have your request that I advise you whether or not you are required to issue commissions to the Board of Bond Trustees for Union County, selected under the provisions of Chapter 9643, laws of Florida, Acts of 1923.

You are not required to issue such commissions. It might, however, be within your province to issue such commissions were it not for the fact that the Act provides for the filling of vacancies which may occur by the remaining members of the board of bond trustees selecting a member to fill such vacancy, and, of course, a person so selected could not be commissioned as an officer by you, and should you assume to issue commissions to the persons selected as trustees in the election held last month, and a vacancy should occur, then a condition would prevail where some of the members of the board would have commissions from your office while the number of members selected to fill vacancies could not have such commissions, and as com-

missions will add nothing to the dignity or the authority of the positions, I deem it best for you to avoid any question of relative authority by refraining from issuing any commissions.

So far as I am able to ascertain, there has never existed any statutory provision requiring the Governor to issue commissions to county or district bond trustees in this State.

Yours very truly,
 RIVERS BUFORD,
 Attorney General.

MUNICIPALITIES—RECALL OF OFFICERS.

Tallahassee, Fla., February 11, 1924.

Hon. Cary A. Hardee,
Governor,
Tallahassee, Fla.

Dear Sir:

I have examined the application and petitions presented to you by certain citizens of Orlando, Florida, wherein and whereby you are requested to call a Special Election to be held by the electors of the City of Orlando for the purpose of recalling two councilmen of the said City of Orlando, to-wit: J. G. Manuel and G. H. Sutherland, for the reasons and upon the grounds set forth in said petition.

I beg to advise that under the provisions of Section 9 of Chapter 6739, Acts of 1913, the Governor of Florida is authorized to call an election to remove the Mayor or any councilmen when petitions complying with the provisions of said Act have been filed before him.

I further advise that in my opinion the petitions and supporting affidavits submitted to me substantially com-

ply with the provisions of the Act referred to and that therefore, you are authorized and required under the law to call the election for the removal of said officers. That it is your duty to call said election to be held not within two weeks of the date of the filing of the petition before you and not later than thirty days from the date of such filing.

Yours very truly,
RIVERS BUFORD,
Attorney General.

COURTS—PARDON.

Tallahassee, Fla., March 26, 1924.

Hon. Cary A. Hardee,
Governor,
Tallahassee, Fla.

Dear Sir:

Replying to your request that I advise you the course which may be pursued in the case of F. A. Riggs, convicted in Hardee County on a charge of forgery as stated to you in a letter from Hon. Geo. W. Whitehurst, under date of March 4.

It appears from the statement of Judge Whitehurst that the second trial of Riggs was entirely without authority of law. When writ of error was taken to the Supreme Court from the Circuit Court the Circuit Court no longer had any jurisdiction of the case and the Circuit Judge was without any authority to make an order in the premises, or to take further action therein. I, therefore, suggest that you ask Judge Whitehurst to have certified copies of indictment, together with certified copies of judgments and sentences and a certified copy of the mandate of the

Supreme Court sent up to the Secretary of the Board of Pardons.

With this in hand it will be entirely proper when Riggs has served a term equal to the sentence lawfully imposed upon him for the Board of Pardons to right the matter by granting him a full pardon.

Yours very truly,

RIVERS BUFORD,

Attorney General.

TAXATION—POLL TAX—NATIONAL GUARD.

Tallahassee, Fla., May 6, 1924.

*Hon. Cary A. Hardee,
Governor,
Tallahassee, Fla.*

Dear Governor:

Replying to your letter of May 5th, asking me to advise you whether or not members of the National Guard are required to pay poll tax to qualify to vote, I beg to say:

It is my opinion that Section 57 of Chapter 8502, Acts of 1921, exempts "every officer and enlisted man of the National Guard" from the payment of poll tax.

It is my opinion that each member of the National Guard is entitled to a certificate from the commanding officer of his company, troop, battery, or similar organization, on a form prescribed by the Adjutant General and signed by such commanding officer, and that such holder of such certificate being duly registered and otherwise qualified may, upon presenting this certificate to the Inspectors at his election precinct, be allowed to vote without having paid poll tax. It will be observed that the certificate is only good for the calendar month within which it bears

date. This provision is for the purpose of preventing those who have not complied with the Military Code from receiving the benefits prescribed by this Section.

Yours very truly,

RIVERS BUFORD,

Attorney General.

TAXATION—SPECIAL DISTRICTS.

Tallahassee, Fla., June 10, 1924.

*Hon. Cary A. Hardee,
Governor,
Tallahassee, Fla.*

Dear Governor:

A careful analyzing of the opinion in the case of Consolidated Land Company, et al., vs. Jensen Bridge District, Frank M. Taylor, et al., will disclose that in this opinion the Supreme Court has enunciated no new or radical statements of the law applicable to such cases.

The propositions of law forming the basis of the decision in this case, which are old and well settled, may be divided into three concise statements and which may be quoted as follows from the opinion by Judge Whitfield:

"1. The validity of a tax levied *only* in a district or subdivision of a County for a *public purpose* may depend upon the nature of the *public purpose* to be served and its special or peculiar relation to the property in the district, at least where public health, safety or morals are not involved; and property in the district can not lawfully be taxed for public improvements or facilities if such tax for any reason substantially and materially imposes an unjust discriminating burden upon the property without *any* resulting compensation, benefits or advantages, and

the tax levy is an arbitrary exertion or an abuse of governmental authority."

"2. It is within the law-making power of the Legislature by duly enacted statute to establish within a county a district, and to impose particular taxes upon the property within the district to pay for a *public local improvement* or facility, when the formation of the district has *at least some* special or peculiar relation to benefits or advantages to accrue either directly or indirectly from the particular improvement or facility, and the property within the district is *taxed* with some substantial relation to benefits or advantages that reasonably may result to the property or to the owners thereof from improvements or facility contemplated."

"3. Where a district is created, though for a proper public *local* improvement or facility, and its formation, whether by statute or under legislative authority, has no just relation to some appreciable or substantial benefits or advantages that reasonably may directly or indirectly accrue from the contemplated improvement or facility, but is purely arbitrary and a plain abuse of governmental power in attempting to unjustly impose the burden of a peculiarly *county* or *State* function or purpose on the property of the district alone, or by attempting to arbitrarily or unjustly include within the district, property of considerable area or value that can not conceivably be in any way benefited by the contemplated improvement or facility, or by attempting to impose arbitrarily or unjustly discriminating or oppressive tax burdens upon property within the district, or by otherwise so exercising the governmental power as to violate organic property rights, the courts will in appropriate proceedings, duly taken, give effect to private rights secured by the Constitution by adjudging and enforcing such relief against unlawful taxation as the circumstances of a justifiable case may justify."

The decision in this case does not in any wise touch or

affect State taxation for State puposes ,or County taxation for County purposes, or municipal taxation for a municipal purpose, or school district taxation for school purposes, but defines the rule of law which must be applied in the creating of special districts for the purpose of constructing local improvements or facilities and which must be adhered to in the levying of taxes for such purposes within such districts.

Yours very truly,
RIVERS BUFORD,
 Attorney General.

SHERIFF—COSTS.

Tallahassee, Fla., June 17, 1924.

Hon. Cary A. Hardee,
Governor,
Tallahassee, Fla.

Dear Governor:

I have your request that I advise you whether or not the Sheriff of a particular County in this State, who sends a warrant to the Sheriff of another County to be executed, is entitled to costs when in the case in which warrant is issued the defendant makes settlement with the Sheriff of the County to which the warrant is sent for execution and in which it appears that the Sheriff of the County from which the warrant issued has made a charge the same as if he had in fact gone for the prisoner and conveyed him to the County in which the charge was made.

I beg to advise it is my opinion that such a charge by a Sheriff of the County in which the warrant issued would be and constitutes a charge for constructive service, which is prohibited by law.

Of course, the Magistrate issuing the warrant would be entitled to the costs which might have accrued to him in such case, and the Sheriff had the lawful right to return the prisoner to his County and to produce him before the Court to be dealt with according to the order of the Court and, had he done so, then he would have been entitled to receive such costs as might have accrued to him in the premises.

Yours very truly,
RIVERS BUFORD,
Attorney General.

COURTS—SENTENCE—ELECTROCUTION.

Tallahassee, Fla., July 1, 1924.

*Hon. Cary A. Hardee,
Governor,
Tallahassee, Fla.*

Dear Sir:

I have examined the transcript of the record submitted in the case of State of Florida vs. Fortune Ferguson, alias Jew Ferguson, convicted of the crime of rape in the Circuit Court of the Eighth Judicial Circuit of Florida, in and for Alachua County, on the 16th day of April, 1924.

I find that such transcript constitutes a sufficient basis to warrant you issuing a death warrant thereon.

It may be proper in this connection to call your attention to the fact that the sentence in this case requires that the convicted person be delivered by the Sheriff of the County to the proper officer of the State Penitentiary of Florida and by him safely kept until such day and time as the Governor by his warrant may appoint. I think it would be well for a different form of sentence to be

adopted. It was evidently not intended that a defendant under sentence of death should be taken to the State Prison Farm until the death warrant shall have been issued and, therefore, I think it would be well for such sentence in each case to read:

"Thereupon, it is the judgment of the Court and the sentence of the law that you.....are guilty of the crime of....., of which you have been and stand convicted, and that for such offense you should be now delivered to the Sheriff of this..... County to be by him safely kept until such time as a warrant issued by the Governor of the State of Florida, fixing a week in which this sentence shall be executed, shall be delivered to the said Sheriff of this County and that you shall then, not less than 5 days prior to the beginning of the week named in said warrant, be delivered by the Sheriff of said County of..... to the proper officer of the State Prison Farm, at Raiford, Florida, and be by the Superintendent of said State Prison Farm safely kept until such day and time as he may fix and determine, within the week designated by the Governor in which to execute this sentence, at which said time so fixed by the said warrant and by the Superintendent of the State Prison Farm, or his Deputy, and within the walls of the permanent Death Chamber, provided by law, you,....., be by the Superintendent of the State Prison Farm, or his lawful Deputy, electrocuted by causing to pass through your body a current of electricity of sufficient intensity to cause your immediate death, and that such current shall be continued to pass through your body until you are dead and. May God Have Mercy On Your Soul."

Yours very truly,
 RIVERS BUFORD,
 Attorney General.

PILOTS—APPOINTMENT.

Tallaassee, Fla., September 17, 1924.

*Hon. Cary A. Hardee,
Governor,
Tallahassee, Fla.*

Dear Sir:

In re: Letter form J. H. Peck asking to be appointed Pilot for the Port of Ft. Pierce.

It is my opinion that unless the harbor referred to has within the past 5 years had come into it vessels of 500 tons burden and at the average rate of 250 vessels per year, there is nothing you can do in the premises. If the Port meets this requirement of the law it appears to me you could appoint Capt. Peck as Harbor Master, which would give him all the power and privileges of Pilot with better pay, or if he does not want to be appointed Harbor Master, you could appoint some one else Harbor Master and then Cept. Peck could take examination before the Pilot Commission and procure license for Pilot for that port.

Yours very truly,
RIVERS BUFORD,
Attorney General.

COURTS—JUSTICE OF PEACE—ELECTION.

Tallahassee, Fla., December 30, 1924.

*Hon. Cary A. Hardee,
Governor,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of this date asking my advice as to whether or not it is your duty to issue a Commission

to a person to be Justice of the Peace for a certain Justice of the Peace District in a certain County in this State, I beg to say:

It appears from the enclosure attached to your letter that one J. T. Stokes, received a certain number of votes at the General Election held on November 4, 1924, for the office of Justice of the Peace of District No. 2 of Alachua County, Florida. If the said J. T. Stokes received any number of votes for such office by reason of electors writing his name upon the ballots and voted for him for such office and no one else was voted for for such office in said election, or if the said J. T. Stokes under such conditions received more votes than any one else at that election received for that office, then the said Stokes became the duly elected Justice of the Peace of that District and is, by qualifying in the manner prescribed by law, entitled to receive from the Governor a Commission as the elected Justice of the Peace of such District.

I return herewith Resolution transmitted to you by the Board of County Commissioners of Alachua County, Florida.

Yours very truly,
RIVERS BUFORD,
Attorney General.

NAVAL STORES—STATUTORY STANDARDS.

Tallahassee, Fla., April 20, 1923.

*Hon. H. Clay Crawford,
Secretary of State,
Tallahassee, Fla.*

Dear Sir:

Replying to your request that I advice you as to what effect the Act of Congress, known as Public-No. 478-67th

Congress, establishing standard grades of naval stores, etc., may have upon Section 4954 of the Revised General Statutes of Florida, fixing standard grades, etc., of naval stores, I beg to say that it is my opinion that the Department of Agriculture of the United States necessarily adopts the Act of Congress and, therefore, under Section 4954 of the Revised General Statutes of Florida the standards as fixed by the Act of Congress are automatically adopted as the standards for Florida.

Yours very truly,
 RIVERS BUFORD,
 Attorney General.

TRADE MARKS—REGISTRATION.

Tallahassee, Fla., August 16, 1923.

Hon. H. Clay Crawford,
Secretary of State,
Tallahassee, Fla.

Dear Sir:

Replying to your letter of this date asking me to advise you whether or not it would be proper for you to register a trade mark consisting of the identical words contained in the name of a corporation which is already on file in your office, I beg to say:

If the application is made by the corporation, the name of which is sought to be used, as a trade mark, then it would be proper for you to register such trade mark for such corporation. It is unlawful for any other person, firm, or corporation, to use the name of an existing corporation as a trade mark and, therefore, only the corporation, the name of which is sought to be used as a trade mark, is entitled to have that name registered as a trade mark.

Yours very truly,
 RIVERS BUFORD,
 Attorney General.

CORPORATIONS—LETTERS PATENT.

Tallahassee, Fla., August 17, 1923.

Hon. H. Clay Crawford,
Secretary of State,
Tallahassee, Fla.

Dear Sir:

I have carefully read letters from Mr. B. Wofford Wait submitted to you in connection with application for Letters Patent incorporating American Riviera Fruit Corporation.

I do not think that the question as to whether or not Chapter 9124, Acts of 1923, amending Section 4052, Revised General Statutes of Florida, shall be construed as being retroactive enters into the instant case.

Whether or not the applicant should pay the tax as prescribed by Section 4052, Revised General Statutes of Florida, or should pay the tax as prescribed by Section 4052, Revised General Statutes of Florida, as amended by Chapter 9124, Acts of 1923, depends entirely upon when the applicant produced to the Governor the proposed Charter accompanied by proof of publication of notice and when Letters Patent were issued.

It is the duty of the applicant not only to file his copy of proposed Charter with the Secretary of State to be on file during the period of publication, but it is further his duty to follow up this with his application to the Governor, together with presentation to the Governor of the copy of the proposed Charter and proof of publication of notice.

The applicant cannot be construed to have attained its corporate existence until it shall have made this presentation to the Governor and obtained from the Governor Letters Patent creating the corporation.

If in the instant case the applicant presented its proposed Charter to the Governor prior to May 26, 1923, and the Governor at such time issued Letters Patent, then the

applicant should only pay the fees prescribed in original Section 4052, Revised General Statutes of Florida, but if the applicant did not produce to the Governor the copy of Letters Patent, together with proof of publication of the proposed Charter until after the 26th day of May, 1923, then you would not be authorized to deliver Letters Patent to the applicant until it shall have paid to your office the fees which are provided in Section 4052, Revised General States of Florida, as amended by Chapter 9124, Acts of 1923, which Act was approved May 26, 1923.

It appears from Mr. Wait's letters that proof of publication was submitted to your office on July 9, 1923. Of course, this does not meet the requirement that proof of publication, with copy of proposed Charter, be produced to the Governor although he may have relied upon your accommodating disposition prompting you to present the matter to the Governor in his behalf.

There is no intimation that a copy of the proposed Charter, with proof of publication, was presented to the Governor prior to July 9, and as such presentation is a condition precedent to the right to acquire Letters Patent, the applicant certainly could not maintain that is is entitled to receive Letters Patent upon the basis of a fee prescribed by law which did cease to obtain on the 26th day of May, 1923. It appears clear to me that the application for Letters Patent was not made to the Governor until the same may have been made by you in behalf of the petitioner after the receipt by you of Mr. Wait's letter under date of July 9, 1923, and at the time this application was made Section 4052, Revised General Statutes of Florida, as amended by Chapter 9123, Acts of 1923, was in full force and effect. Therefore, petitioner should be required to pay the fee obtaining at that time.

Yours very truly,

RIVERS BUFORD,

Attorney General.

CORPORATIONS—CAPITAL STOCK PAID

Tallahassee, Fla., October 15, 1923.

*Hon. H. Clay Crawford,
Secretary of State,
Tallahassee, Fla.*

Dear Sir:

It is my opinion that a corporation organized with 1500 shares of preferred stock of the par value of \$100.00 each and 3600 shares of common stock of no par value would be authorized to transact business when otherwise qualified by having its Treasurer file affidavit in the office of the Secretary of State and to file a duplicate thereof in the office of the Clerk of the Circuit Court, showing that 10% of the amount of the preferred stock has been subscribed for and paid in, and that \$1000.00 of the no par value stock has been subscribed for and paid in.

Yours very truly,
RIVERS BUFORD,
Attorney General.

CORPORATIONS—FILING FEES

Tallahassee, Fla., February 19, 1924.

*Hon. H. Clay Crawford,
Secretary of State,
Tallahassee, Fla.*

Dear Sir:

I have carefully considered the case of INTERNATIONAL AGRICULTURAL CORPORATION, which makes application to you for a certificate under an amendment to its Charter.

My view of this matter is that if this amendment had been filed in your office prior to the passage of Chapter 9124, Acts of 1923, that then no additional filing fee would have been required. But this condition does not obtain. Under the provisions of Section 4096 and 4097, Revised General Statutes of Florida, foreign corporations are required to pay the same filing fees as are required to be paid by associations incorporated under the laws of the State of Florida.

Prior to the enactment of Chapter 9124, Acts of 1923, there was no provision under the statutes of Florida whereby a corporation could be organized under the laws of this State with non par value stock. Regardless of what the amount of capital stock might appear to be, Section 4052, Revised General Statutes of Florida, as amended by Chapter 9124, requires that the corporation shall pay a Charter fee on no par value stock based upon the valuation of \$100.00 per share and, therefore, I agree with your conclusion that when a domestic or foreign corporation reclassifies its stock and classifies a part of the same as no par value stock, it becomes your duty to base your filing fee upon such no par value stock at a valuation of \$100.00 per share. This does not mean that the capital stock of the corporation is equal to the aggregate sum of the par value shares plus the sum of no par value shares at a valuation of \$100.00 each, but it merely means that the association must pay a fee based upon this valuation regardless of whether or not the actual value of the stock is more or less than \$100.00 per share.

If in the instant case, it had been determined to issue 450 shares of common stock without nominal or par value, those 450 shares would have been of the same actual value that the 450,000 shares now represent, but the Charter fee would have been based upon the 450 shares at a valuation of \$100.00 each.

It is a recognized fact that many advantages accrue by reason of adopting no par value shares of stock in

the organization of corporations and it appears that the Legislature wisely fixed a rule to be used in computing the Charter tax or filing fee to be assessed against corporations adopting this method.

Yours very truly,
RIVERS BUFORD,
Attorney General.

CORPORATIONS—PREFERRED AND COMMON
STOCK.

Tallahassee, Fla., March 1, 1924.

*Hon. H. Clay Crawford,
Secretary of State,
Tallahassee, Fla.*

Dear Sir:

Replying to your request that I advise you how the inquiry presented by Messrs. Burdine & Barco, in an unsigned letter dated February 26, 1924, should be answered, I beg to say:

It is my opinion that in construing that part of Section 4056, Revised General Statutes, as amended by Chapter 9124, Acts of 1923 which reads as follows:

“But at no time shall the amount of the preferred stock exceed two-thirds of the actual capital paid in cash or property.”

We must supply the word “issued” after the word “stock” and before the word “exceed,” as this would clearly express the legislative intent.

Under such construction, it would naturally follow that under the facts stated in the letter referred to the corporation could increase its capital stock, both common and preferred, to any amount desired so long as it kept the ratio

existing at \$2.00 value of preferred to \$1.00 value of common, and could sell such stock either in separate shares or in blocks, but would be required to keep the ratio of issued stock on a basis of not more than \$2.00 of value of preferred stock to \$1.00 of value of common stock.

Yours very truly,
 RIVERS BUFORD,
 Attorney General.

CORPORATION—FILING FEES.

Tallahassee, Fla., March 14, 1924.

*Hon. H. Clay Crawford,
 Secretary of State,
 Tallahassee, Fla.*

Dear Sir:

In re: Caledonian Insurance Company of Scotland, Hartford, Conn.

I suggest that you advise the company what the filing fee will be to file the Charter of the Company to authorize it to transact business in the State of Florida. In doing so you will reduce the pounds sterling of the capital stock to its value in currency of the United States and use that value as a basis for fees for your office.

Yours very truly,
 RIVERS BUFORD,
 Attorney General.

CORPORATIONS—DISSOLUTION.

Tallahassee, Fla., April 28, 1924.

*Hon. H. Clay Crawford,
Secretary of State,
Tallahassee, Fla.*

Dear Sir:

I have your request that I advise you as to what would be necessary to be done before the American Life Insurance Company of Detroit, Michigan, could receive a permit from your office to do business in this State, and in reply thereto I beg to say that it will be necessary for a showing to be made in your office that the American Life Insurance Company, formerly doing business in Tampa, Florida, has been legally dissolved. The mere fact that the Company has ceased to do business is not sufficient unless its charter rights have expired by operation of time. A certificate from the proper officials that the old Company has been dissolved, stating the manner and date of the dissolution, will be sufficient for your files.

Yours very truly,
RIVERS BUFORD,
Attorney General.

CORPORATIONS—LETTERS PATENT.

Tallahassee, Fla., May 5, 1924.

*Hon. H. Clay Crawford,
Secretary of State,
Tallahassee, Fla.*

Dear Sir:

In re: Proposed Articles of Incorporation of
West Coast Building and Loan Association.
The above mentioned proposed Articles of Incorporation

were presented to me on April 29, and I then considered Article III thereof in connection with Section 4056, Revised General Statutes of Florida, as amended by Chapter 9124, Acts of 1923.

My attention has been called by Mr. G. B. Knowles of Bradentown, Florida, to the fact that this application for Charter is made under sub-section 2, Article I, embracing Sections 4207 to 4233, inclusive, of the Revised General Statutes of Florida, which has special application to Domestic Building and Loan Associations.

Letters Patent obtained under these special provisions of the statute are not required to conform to the general law providing for the incorporation of associations for profit, and I find that Mr. Knowles is correct in his contention that Section 4056, as amended by Chapter 9124, Revised General Statutes of Florida, does not apply to corporations of this character and, in consideration of these facts, I beg to advise you that in my opinion the proposed Articles of Incorporation conform to and substantially comply with the statute governing the incorporation of Domestic Building and Loan Associations and that there appears no reason why Letters Patent should not issue thereon.

Yours very truly,
RIVERS BUFORD,
Attorney General.

CORPORATIONS—NAMES SIMILAR.

Tallahassee, Fla., June 24, 1924.

*Hon. H. Clay Crawford,
Secretary of State,
Tallahassee, Fla.*

Dear Sir:

I have your request that I advise you whether or not

THE AMERICAN REALTY AND INVESTMENT COMPANY, a corporation existing under the laws of the State of Tennessee, may receive a permit to do business as such corporation in the State of Florida when it appears from the files in your office that Letters Patent have been granted to a corporation organized under the laws of this State in the name of THE AMERICAN REALTY COMPANY.

Section 4102, Revised General Statutes of Florida, reads as follows:

"That no permit under this article shall be issued to any foreign corporation to transact business or acquire, hold or dispose of property in this State under any corporate name which is or may be the same as the corporate name of any corporation organized or existing under the laws of the State of Florida, or so nearly similar thereto as to cause or tend to cause confusion."

It, therefore, appears that this is a case in which you are required to exercise your judgment and discretion and if, in your opinion, the name of the foreign corporation applying for domestication bears a name so nearly similar to a corporation existing under the laws of the State of Florida as to tend to cause confusion it becomes your duty to decline to file the Charter of such foreign corporation and decline to issue the certificate authorizing such corporation to do business in this State.

Yours very truly,

RIVERS BUFORD,

Attorney General.

CORPORATIONS—TRUST FUNCTIONS.

Tallahassee, Fla., July 14, 1924.

*Hon. H. Clay Crawford,
Secretary of State,
Tallahassee, Fla.*

Dear Sir:

I have your request that I advise you how you may answer letter of Continental and Commercial Trust and Savings Bank of Chicago, under date of July 10th, in which that institution asks for an opinion from this office construing the proviso contained in Section 1 of Chapter 8531, Acts of 1921, I beg to say:

My construction of this proviso is that the same only applies to those cases in which the appointment by a non-resident decedent of a trustee executor, or administrator, of a will had become effective prior to the passage of the Act.

I do not think that the proviso means that after the passage of that Act anything except residents and corporations organized under the laws of this State could be appointed to and could exercise trust functions.

The letter referred to me by you indicates that the client making the will and appointment thereunder is still living and, therefore, I think the proper course for him to pursue is to destroy that will, or add a codicil to it appointing an executor to handle the Florida property in accordance with the Florida law.

Yours very truly,
RIVERS BUFORD,
Attorney General.

CORPORATION—FILING FEES.

Tallahassee, Fla., August 7, 1924.

*Hon. H. Clay Crawford,
Secretary of State,
Tallahassee, Fla.*

Dear Sir:

Replying to your request that I advise you as to what shall be the basis of figuring the State Domestication Tax for the ZURICH GENERAL ACCIDENT AND LIABILITY INSURANCE COMPANY, LIMITED, of Zurich, Switzerland, I beg to say:

It appears from Article III of the ARTICLES OF INCORPORATION of the above named company that the capital of the company is 20 million franks. This is equivalent to \$4,000,000.00 in currency of the United States of America and, therefore, in my opinion you should require fees which obtain as to this company's capitalization at \$4,000,000.00.

Yours very truly,
RIVERS BUFORD,
Attorney General.

CORPORATIONS—DOMESTICATION.

Tallahassee, Fla., October 6, 1924.

*Hon. H. Clay Crawford,
Secretary of State,
Tallahassee, Fla.*

Dear Sir:

Replying to request contained in letter from Messrs

Whitaker, Hines & Whitaker, to you, under date of October 2nd, I beg to say:

It appears there is no specific provision of our statute which would preclude Central New York Title Guaranty Company issuing re-insurance to the Guaranty Title Company of Florida without being domesticated in this State, and it further appears that under the plan outlined in the previous letter from the gentlemen above named that this business will be transacted entirely in the City of New York. But, the Guaranty Title Company of Florida would be confronted with the proposition that it is doing business with a company not authorized to do business in the State of Florida and upon which neither that company nor any person, firm or corporation having a claim based upon such re-insurance could procure service upon or enforce such claim in the Courts of this State.

Yours very truly,

RIVERS BUFORD,

Attorney General.

CORPORATIONS—DECLARATIONS OF TRUST.

Tallahassee, Fla., October 23, 1924.

*Hon. H. Clay Crawford,
Secretary of State,
Tallahassee, Fla.*

Dear Sir:

Replying to your inquiry as to my construction of Chapter 9125, Acts of 1923, I beg to say it is my opinion that the provisions of the statute include all persons who associate themselves together for the purpose of transacting any business under the Declaration of Trust whether units are sold to the public or not.

I deem it to have been the legislative purpose to place

a nominal tax on the privilege of doing business in this State under advantages incident to a trust agreement, and to provide notice to the public of the provisions of such trust agreement.

Yours very truly,
RIVERS BUFORD,
Attorney General.

CORPORATIONS—TRADE MARKS.

Tallahassee, Fla., December 9, 1924.

*Hon. H. Clay Crawford,
Secretary of State,
Tallahassee, Fla.*

Dear Sir:

As per your request I have considered the application of Premier Motors, Inc., to file and have recorded in the office of the Secretary of State a trade mark consisting of six features adopted by said company as its trade mark, and which are each particularly described in the application and by photographs attached thereto.

I find upon investigation the law to be that a person, firm or corporation may adopt a particular combination of features producing a peculiar visual appearance for the purpose of presenting his goods to the market and that he is entitled to be protected in the use of such combination of such various features as a trade mark.

It is, therefore, my opinion that the applicant is entitled to have its trade mark as presented consisting of the aforesaid several different features filed and recorded under the provisions of Section 4996, Revised General Statutes of Florida.

Yours very truly,
RIVERS BUFORD,
Attorney General.

TAXATION—RAILROADS.

Tallahassee, Fla., February 19, 1923.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of February 14th, attaching letter from Mr. H. W. Johnson, Assistant General Counsel of Central of Georgia Railway Company, (which I herewith return to you) I beg to say that I think the question of whether or not the Central of Georgia Railway Company is assessable for an ad valorem tax on a sleeping car operated over the Georgia, Florida and Alabama Railroad will depend upon whether or not the Central of Georgia Railway Company operates a railroad in the State of Florida.

It is my opinion that if it operates a railroad in the State of Florida, then the proper proportion of the ad valorem tax upon this car could be assessed with the other cars belonging to the Company, but if the Central of Georgia Railway Company does not operate in the State of Florida, then I do not think personal property belonging to that Company is assessable in this State for ad valorem taxes.

Yours very truly,

RIVERS BUFORD,

Attorney General.

TAXATION—POLL TAX RECEIPTS—DATING
BACK.

Tallahassee, Fla., February 28, 1923.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of the 23rd instant asking me to advise you whether or not a Tax Collector is authorized to back date poll tax receipts and with which letter you attach a letter from Hon. Alvin C. Crow, Tax Collector of Palm Beach County, I beg to say that it is my opinion that a Tax Collector is not authorized to date a poll tax receipt prior to the date upon which the poll tax is paid into the office of the Tax Collector.

I herewith return Mr. Crow's letter to you.

Yours very truly,
RIVERS BUFORD,
Attorney General.

MOTOR VEHICLES—CANCELLATION REGISTRA-
TION.

Tallahassee, Fla., March 21, 1923.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

I have your letter of the 17th instant asking for an

opinion from this office upon the following questions as stated in your letter:

"Mr. James G. Cary, Box 3006, Jacksonville, Florida, states that on January 11th his automobile which was duly registered for the year 1923 was stolen the night after the tag was placed thereon. He wishes to know if under those circumstances his registration could be cancelled and the money paid thereon be refunded to him, or credited on another registration, which would be the same thing. The tag was stolen with car.

"Mr. R. E. Blitch of Quincy, Florida, registered a truck under the Motor Vehicle License Law and placed the proper tag thereon and about one week later the truck was destroyed by fire. He wishes to know if in such a case the registration of the truck could be cancelled and the money paid thereon refunded to him."

I find nothing in the Automobile License Law which authorizes you to cancel the entry or to refund the money paid for license tags under such conditions. Justice and fairness demands that the law should be so amended that cancellation and refunds could be met in such cases in the future, and also should authorize the Comptroller to adjust such cases which may have occurred already.

Yours very truly,

RIVERS BUFORD,

Attorney General.

TAXATION—ASSESSMENT.

Tallahassee, Fla., April 11, 1923.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

I have your your letter of the 11th instant asking my opinion as to the settlement of tax claim *in re* assessment against the Duval Corporation.

If the facts as to the title of the property are as stated by Messrs. Knight & Adair and is as shown by the copy of contract attached to their letter, then the title was as of January 1, 1921, so vested in a governmental agency as to preclude the assessment of taxes against the property and the settlement offered would appear advantageous to the State.

Yours very truly,
RIVERS BUFORD,
Attorney General.

HOTEL COMMISSION—SALARIES.

Tallahassee, Fla., July 3, 1923.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of July 3rd asking me to advise you as to the date "on which the increase of salaries of the Hotel Commissioner and assistants became or becomes effective" I beg to say:

The increases in salaries referred to became effective under the provisions of Senate Bill No. 171, which is Chapter 9264, Acts of 1923, upon the said Act being approved by the Governor, which occurred on the 7th day of June, 1923.

Yours very truly,
RIVERS BUFORD,
Attorney General.

TAXATION—SPECIAL DISTRICTS.

Tallahassee, Fla., July 28, 1923.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of the 27th, asking my opinion as to whether or not a special sub-school district tax may be assessed, and collected, on the assessment rolls for 1923, when such Special Tax School District shall appear to have been lawfully created after the first day of January, 1923, and before the millage has been fixed for the collection of taxes for that year, I beg to say:

It is my opinion that under the conditions above stated a special tax for such district may be lawfully assessed and collected for the current year.

Yours very truly,
RIVERS BUFORD,
Attorney General.

COMMISSIONER OF AGRICULTURE—CLERKS.

Tallahassee, Fla., July 28, 1923.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of the 28th, asking my opinion as to whether or not you are authorized to draw warrants honoring a bill approved by the Commissioner of Agriculture for the salary of Clerk of the Oil Division, payable from the Oil Inspection Fund, and also a bill of the State Printer for printing bulletin to be paid from the same fund, I beg to say:

It is my opinion that you are authorized to draw a warrant in payment of the salary of the Clerk. I find no provision authorizing the Commissioner of Agriculture to print a bulletin at the expense of this Fund. He is required to include in his Biennial Report an account of the operation and expenses under the Act.

Chapter 7905, Acts of 1919, authorizes the collection by the Commissioner of Agriculture of an inspection tax on gasoline and oils. That Act specifically provides that the Commissioner of Agriculture is authorized to employ one or more clerks in the Oil Division, and fixes the compensation thereof, and authorizes and directs the Comptroller to issue warrants payable out of the Gasoline Inspection Fund on vouchers approved by the Commissioner of Agriculture to cover all expenses incurred in the administration of that Act.

Section 4 of Chapter 9121, Acts of 1923, specifically provides that nothing in such Act shall be construed as repealing any portion or provision of Chapter 7905, Acts of 1919, Laws of Florida. This provision of the Act was disapproved by the Governor in a letter of transmittal to

the Secretary of State under date of June 11, but it is my opinion that such disapproval had no effect upon the provisions of the Act.

Under Section 18, Article 4 of the Constitution, the Governor is authorized to disapprove any item or items of any bills making appropriations of money embracing distinct items, and in such cases the item or items of appropriations disapproved shall be void unless repassed according to the rules and limitations prescribed for the passage of other bills over the Executive veto.

In the instant case, the Governor did not disapprove any item or items of the appropriation bill, but stated his disapproval of a provision in the bill, expressing the legislative intent as to the effect that such bill should have upon pre-existing law, and, therefore, in my opinion, did not constitute a veto of an item of appropriation as contemplated in the above mentioned Section of the Constitution.

Yours very truly,

RIVERS BUFORD,

Attorney General.

STATE CHEMIST—INCIDENTAL EXPENSES.

Tallahassee, Fla., August 2, 1923.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

I have your letter of August 1st asking my opinion as to whether or not the item appearing in the Appropriation Bill, Chapter 9121, Acts of 1923, under the caption of State Chemist "Samples, Pure Food Department—\$1500.00" should be construed to cover incidental expenses occurring in the Department and which are neces-

sarily incurred in the proper functioning of that Department.

It is my opinion that the legislative intent should control in this matter, and it is evident it was not the legislative intent to appropriate \$1500.00 a year to that Department to be expended exclusively in the procuring of samples. The expense of samples in that Department probably will not run more than \$250.00 a year. It would be impossible for this Department to function without an appropriation to cover its incidental expenses. Chapter 5662, as amended by Chapter 6122, as amended by Chapter 6541, prescribes the expenditure allowed for the administration of the Chemical Division and among other things provides for: "Samples and Incidentals, Pure Food Department." Each appropriation subsequent thereto had in like manner provided for: "Samples and Incidentals in this Department" until the enactment of Chapter 9121 in which the words, "And Incidentals" appear to have been inadvertently omitted.

It is evident that had the Legislature not intended this appropriation to cover "Incidentals" and had only intended it to cover strictly the cost of samples the amount of the appropriation would have been greatly reduced.

It is my opinion that this item in the Appropriation Bill was intended to cover the cost of samples and incidental expense of the Pure Food Department, and that you are authorized to so construe the provision and draw your warrant for the payment of incidentals against this item.

Yours very truly,

RIVERS BUFORD,

Attorney General.

COMMISSIONER OF AGRICULTURE—INSPECTORS.

Tallahassee, Fla., August 16, 1923.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of August 13th in regard to the payment of certain bills, which I return herewith, approved by the Commissioner of Agriculture to be paid by warrants to be drawn on the Gasoline Inspection Fund, I beg to say:

It is my opinion that under Sections 3, 4, 5, 9, 10 and 11 of Chapter 7905, Acts of 1919, the enclosed bills represent proper items to be paid from the Gasoline Inspection Fund.

Replying to your second paragraph in same letter I beg to say that it appears that no Inspectors have been appointed under the provisions of Section 3 of Chapter 7905, Acts of 1919, but certain Inspectors have been appointed as Food, Drug and Fertilizer Inspectors under the Chemical Division and are directed to perform the duties of Oil Inspectors under the direction of the Commissioner of Agriculture. In the performance of these duties there will accrue items of traveling expense which, in my opinion, should be paid from the Gasoline Inspection Fund, and which expense under the law creating such Fund is limited to \$1200.00 for each Inspector per annum. It is a matter of common knowledge that Inspectors cannot travel full time on \$100.00 per month. Therefore, the expense account should be divided between the Gasoline Inspection Fund and the appropriation provided for the payment of expenses of Food, Drug and Fertilizer Inspectors. I would suggest that the traveling expenses up to \$100.00 per month be paid from the Gasoline Inspection Fund and

the balance from the Fund provided for the payment of the expense of Food, Drug and Fertilizer Inspectors.

The salary of the Assistant State Chemist, appointed under the provisions of Section 3 of Chapter 7905, Acts of 1919, is fixed at \$1800.00 per annum by statute, and, it is my opinion, that this salary cannot be changed by the process of the Legislature appropriating more than enough to pay the salary fixed by the statute. This rule, of course, does not apply to assistants, clerks, or other employees, whose salaries are not definitely fixed by statute.

Yours very truly,

RIVERS BUFORD,

Attorney General.

TAXATION—LICENSES—AUTOMOBILE DEALERS.

Tallahassee, Fla., August 29, 1923.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

I have your letter of the 28th instant with enclosure from Mr. Randall Wells, under date of August 5th, in which you ask my advice as to whether or not the provisions of Section 808, Revised General Statutes, and Section 809, Revised General Statutes, remain in full force.

Section 808 is superseded by Chapter 9179, Acts of 1923, in so far as the said Section is applicable to real estate brokers, or real estate salesmen, but remains in full force in its application to other lines of business connected with real estate.

Section 809 applies to the business of dealing in automobiles and is not affected by the provisions of Chapter 9159, Acts of 1923, which requires dealers to procure Dealers'

License Tags from the office of the Comptroller. The license tags do not constitute a license to do business but constitute evidence of the license having been paid which authorizes the dealer to exercise the privilege of operating the automobile to which such tag is attached on the public highways of the State. The occupation license tax should be collected as heretofore.

Yours very truly,
RIVERS BUFORD,
Attorney General.

STATE CHEMIST—ASSISTANTS—SALARIES

Tallahassee, Fla., August 30, 1923.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

Under date of August 13th you requested an opinion from me as to what salary should be paid to the Assistant State Chemist (Oil Analyst) and on August 16th I advised you as follows:

"The salary of the Assistant State Chemist, appointed under the provisions of Section 3 of Chapter 7905, Acts of 1919, is fixed at \$1800.00 per annum by statute, and, it is my opinion, that this salary cannot be changed by the process of the Legislature appropriating more than enough to pay the salary fixed by the statute. This rule, of course, does not apply to assistants, clerks, or other employees, whose salaries are not definitely fixed by statute."

The opinion as expressed in the above quoted paragraph is technically correct, but it evidently does not conform to the legislative intent. Since writing the letter to you of the 16th instant I have had this matter under consideration

and I find that the Legislature has apparently adopted the uniform practice of changing salaries of the minor officials and attaches in the various departments of the State Government simply indicating what the salary should be by the figures placed in the Appropriation Bill. Thus it is shown clearly to have been the legislative intent to have raised or lowered the authorized salaries according to the figures and sums fixed in the General Appropriation Bill.

To adhere to the strict technical rule enunciated in my letter of the 16th instant and quoted herein above would evidently result in the setting aside of the legislative intent and would certainly appear to be unfair and unjust to a great many employees whose salaries would be thus involved.

After mature consideration I am, therefore, of the opinion that you should be governed by that construction of the law which clearly conforms to the legislative intent rather than by a strict technical construction, which would defeat the legislative intent, and that being so governed, you are authorized to draw your warrant for the payment of the salaries of the Assistant State Chemist and other employees in accordance with the provisions of the Appropriation Bill of 1923.

Yours very truly,
RIVERS BUFORD,
Attorney General.

TAXATION—SPECIAL DISTRICTS.

Tallahassee, Fla., September 13, 1923.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of the 11th instant, I beg to say:

It is my opinion that a tax authorized under the Constitution is levyable in and for a Special Tax School District if such District is shown to have been created prior to the time that the assessment of taxes for County purposes is authorized to be entered upon the tax rolls by the Tax Assessor and that is immaterial whether the District is shown to have been created before or after the 1st day of January. The same rule applies to a raise in millage authorized by an election occurring after the first of January and before the assessment is made upon the tax roll.

Yours very truly,
 RIVERS BUFORD,
 Attorney General.

SCHOOLS—EXAMINATIONS—EXPENDITURES.

Tallahassee, Fla., October 10, 1923

*Hon. Ernest Amos,
 State Comptroller,
 Tallahassee, Fla.*

Dear Sir:

Replying to your letter of the 8th instant with reference to bill presented by Hon. W. S. Cawthon, State Superintendent of Public Instruction, in favor of Miss Lois Stuckey for 27 days recording examination grades, I beg to say:

I see no reason why this bill cannot be paid from the fees accruing under Sections 4, 12 and 21 of Chapter 9122, Acts of 1923, because it appears to me that this is work necessarily done in connection with grading papers and constitutes one of the acts necessary to be done in the

office of the Superintendent of Public Instruction incident to the grading of papers.

Yours very truly,
RIVERS BUFORD,
Attorney General.

TAXATION—LICENSES—SALES STABLES.

Tallahassee, Fla., October 30, 1923.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

On account of the confusion which has arisen throughout the State with reference to the meaning of Chapter 8592, Acts of 1921, I deem it advisable to address you this further letter upon that subject.

In some of the Circuits of the State the Circuit Judges have issued orders mandamusing the County Tax Collectors to issue sales stables' licenses upon the payment of all the license tax provided in Section 917, Revised General Statutes of Florida. I do not know whether these orders have been issued upon the theory that the sales stables business is one which may be licensed under Section 917 and conducted under such license when not in conflict with Chapter 8592, or whether the Judges have held Chapter 8592, Acts of 1921, to be invalid.

If Chapter 8592 is valid, then it precludes any person from bringing into the State of Florida for sale any live stock without paying the drover's license of \$500.00, but in the event one might engage in the business of conducting a sales stable without bringing live stock into the State of Florida for sale and thereby becoming a drover within the language of the statute, then such person would be

entitled to have issued to him a license to conduct the business as a sales stable.

It is my opinion that Chapter 8592 attempts to place a burden in the way of a license tax on interstate commerce and that the enforcement of this Chapter would constitute a discrimination against interstate commerce and, therefore, if the enforcement of the statute is properly contested in the Courts the result would be that the Courts would hold it invalid and of no force and effect.

Yours very truly,

RIVERS BUFORD,

Attorney General.

TAXATION—LICENSE—AUTOMOBILE TRUCKS.

Tallahassee, Fla., October 30, 1923.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

I have your letter of the 29th instant requesting my opinion as to whether or not under the following state of facts, to-wit:

“A Contractor building roads ‘sub-contracts’ hauling the clay to certain truck owners, the compensation to be at an agreed price per cubic yard for clay delivered on the road, the main Contractor loads the clay on the truck of the sub-contractor, the sub-contractor merely hauling the same and dumping it on the road to be surfaced”—

the motor trucks used should be classified as “for private use only” or should be classified as “used for hire.”

It is my opinion that under the above state of facts the sub-contractor is engaged in the business of operating a

truck for hire and reward. He is in the same position as the individual who would contract to haul all material to be used by any other class of contractors engaged in construction work. He is in the same position as a person who would contract to haul all commodities of any other certain class or kind for another person on the public highways and, therefore, it is my opinion that such motor trucks should be classified as "used for hire."

Yours very truly,

RIVERS BUFORD,

Attorney General.

HOTEL COMMISSION—MAINTENANCE FUND.

Tallahassee, Fla., November 7, 1923.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

I have your letter of November 5th requesting that I advise you my construction of Section 9 of Chapter 9264, Acts of 1923.

It is my opinion that Section 2151, Revised General Statutes of Florida, as amended by Section 9 of Chapter 9264, Acts of 1923, became effective as so amended on the 1st day of October, 1923, and that it was the duty of the Hotel Commissioner on the 30th day of September, 1923, to render to the State Comptroller of Florida an accounting of all monies which had been collected by the Commission up to that time for inspections performed or licenses issued covering the period of time prior to October 1st, showing the balance on hand from such surces on that date which had been collected as such fees under existing statutes, and that it was his duty with such report to

transmit to the State Treasurer the balance on hand. It thereupon became the duty of the State Treasurer to place this sum of money so transmitted to the credit of the General Fund just as like remittances were received and credited prior to the enactment of Chapter 9264.

It is my opinion that it was the intent of the Legislature to give the Hotel Commission the benefit of the fees for all licenses becoming effective from and after October 1st, and for all fees for inspections made from and after October 1st; and that, therefore, fees for licenses issued to take effect from and after October 1st should not be included in the sum to be refunded by the State Treasurer to the General Fund, but such sums should be placed to the credit of the Maintenance Account for the Hotel Commission.

Yours very truly,

RIVERS BUFORD.

Attorney General.

TAXATION—LICENSES—AUTOMOBILE BUS.

Tallahassee, Fla., January 18, 1924.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

Referring again to your letter of January 8th in which you requested my opinion in a case which is stated in your letter as follows:

“A motor bus operated for hire is owned by a corporation, not a resident of Florida. This bus was placed in operation in the State recently and application has been made for license to operate for hire by a party who claims to be a resident of the State and who claims to be operat-

ing said bus as the lessee thereof. At the same time, an application has been made by the foreign corportiaon claiming to be the owner of said bus for a certificate of title to be issued to the company direct on the said motor vehicle, stating in the application for certificate of title that the bus is being 'operated' by the lessee above mentioned.

"Will you kindly advice me if the license tag for this motor bus should be issued upon the basis charged residents of the State or upon the basis non-residents are charged?

"Second, will you kindly advise if the license tag should be taken out by the lessee in his name, or should the owner equip such bus with the license tag?

"Third, should a certificate of title be issued upon the application which has been filed here by the owners, should the lessee take out a certificate of title, or should any certificate of title be issued on the motor vehicle?"

I find that upon further consideration of this matter my opinion to you as rendered on January 8th is in error because, under Section 1006, Revised General Statutes of Florida, as amended, it is prescribed that "the term OWNER shall include any person, firm, corportiaon or associtaion, *controlling* any moter vehicle by right of purchase, gift, *lease* or otherwise" and, therefore, the lessee of a motor driven vehicle is accorded the same right with regard to operating license tax which would be accorded him if he were the real owner of the vehicle. The same provision is found in paragraph (b) of Chapter 9157, Acts of 1923, governing motor vehicle title certificates.

It is, therefore, my opinion that if a resident of the State of Florida is the bona fide lessee of a motor driven vehicle owned by a non-resident of the State of Florida that such resident lessee may apply for and obtain as a resident a license tag to operate such motor driven vehicle, and that the title certificate may be issued either to such lessee as a "lessee" or to the owner as "owner."

Before a license tag is issued, however, the Comptroller should take such steps as may be necessary to ascertain whether or not the person claiming to be a bona fide lessee is in fact a lessee, or is merely acting as the agent of the non-resident owner, and this can best be ascertained by reference to the contract between the parties, a copy of which should be willingly furnished your office upon request.

It also follows that a resident lessee of a motor driven vehicle obtaining a license in his own name could not operate the vehicle or vehicles in the name of the non-resident owner.

Yours very truly,
RIVERS BUFORD,
Attorney General.

TAXATION—GASOLINE.

Tallahassee, Fla., January 18, 1924.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of January 8th, I beg to say:

As a general rule the State cannot enforce the payment of a tax which is directly or indirectly a charge against the United States Government, or against any other governmental department. It appears, however, that the collection of a tax upon the producer or vendor of commodities as to which the taxing authority does not look to the vendee for payment is enforceable on all such commodities regardless of whether or not the governmental department is the purchaser.

The Treasury Department of the United States holds:

"With respect to the Federal excise taxes on automobiles and other articles enumerated in Sections 900, 902, 904 and 905 of the Revenue Act of 1921, you are advised that they are taxes imposed upon the manufacturers and vendors of the articles enumerated and are payable by such manufacturers and vendors. It is understood that there is a common practice among manufacturers and vendors to bill separately to the purchasers of automobiles and other articles enumerated in the sections above referred to an amount equal to the tax thereon and call it a tax. This, however, does not alter the fact that the Government imposes the tax upon the manufacturers and vendors and not upon the purchasers. The Government looks only to the manufacturers or vendors for the payment of the tax. It is, therefore, clear that the exemption provision of the Treaty cannot operate to exempt Spanish Consuls from taxes which the Government does not impose upon them."

The principles of the above stated departmental ruling should be applied in controversies on like subjects between the State Government and the Federal Government and, applying the principles of this ruling to the Gasoline Sales Tax in force in the State of Florida, it is my opinion that the dealers in gasoline are not entitled to exemption from the payment of the tax upon gasoline sold to the government, or to and for the use of its departments.

Yours very truly,
RIVERS BUFORD,
Attorney General.

ELECTIONS—POLLS—TIME OF PAYMENT.

Tallahassee, Fla., March 26, 1924.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of this date which reads as follows:

“I am transmitting herewith a letter from Hon. Randall Wells, Tax Collector Putnam County, in relation to the time at which he must discontinue accepting poll taxes.

“Kindly let me have your opinion on the subject.”

I beg to say that the Tax Collector may accept the payment of poll tax at any time that the same is offered.

A person to be qualified to vote, however, in the Primary Election, which will be held on the 3rd day of June of this year, if within the poll tax age, must have paid his or her poll tax for two years next preceding the election year; that is, for 1922 and 1923 on or before the 10th day of May, which is the second Saturday in the month next preceding the day of the election. In construing this provision of the law the Supreme Court has held that the month next preceding the day of the election is the 30 days next preceding the election and begins on the corresponding day of the preceding month. Therefore, the month preceding the election begins on Saturday, the 3rd day of May and the second Saturday in that month is the 10th day of May.

Yours very truly,
RIVERS BUFORD,
Attorney General.

ADJUTANT-GENERAL—ARMORY EXPENSES.

Tallahassee, Fla., March 31, 1924.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of March 28 with reference to payment to Adjutant General J. Clifford R. Foster allowance for uniforms, I beg to say:

I see no reason why this allowance should not be paid. Section 41 of Chapter 8502, Laws of Florida, provides for the allowance to be paid in the following language:

‘There shall also be paid to each commissioned officer of the Florida National Guard, upon his requisition, approved by the Adjutant General, when he shall have served not less than one year, the sum of forty dollars (\$40.00) as a uniform allowance, and he shall thereafter be entitled to a uniform allowance of fifteen dollars (\$15.00) for each completed additional year of service.’

Chapter 9121, Acts of 1923, on page 39, under the caption of “ARMORY EXPENSES,” contains an appropriation for uniform allowance of \$1800.00 per year for the year ending July 1, 1924, and for the year ending July 1, 1925, and this appropriation was certainly made in pursuance to Section 41 of Chapter 8502, Laws of Florida.

Yours very truly,

RIVERS BUFORD,

Attorney General.

TAX CERTIFICATES—CANCELLATION.

Tallahassee, Fla., April 21, 1924.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

In Re: Butts et al. v. Amos, Comptroller, et al.

The bill of complaint filed in the above cause prays for cancellation of tax certificates issued in 1913 and 1914 upon the assessments of 1912 and 1913, respectively, as shown by copy of the exhibits which are hereto attached.

It appears that the assessment for 1912 was void and of no effect because Section 2 of Chapter 6157, Laws of Florida, was not complied with in that the Board of County Commissioners failed to ascertain and determine the amount of State and County taxes to be levied and assessed for the year 1912, and that such Board failed to assess and levy such taxes, and failed to enter the same in the minutes of the Board of County Commissioners for that year. Therefore, it appears to me that these certificates should be cancelled.

It is claimed that the certificates shown by exhibit "B" are void because the County Commissioners failed to designate a newspaper in which the tax sales were to be published at their meeting in January, 1914, or at any other time during the year 1914.

This, of course, would invalidate the certificates, but I do not think it would invalidate the assessment, and it would probably be well for us, if necessary, to litigate for the amount of taxes so assessed without interest or costs.

I have had a letter from the attorneys for complainant in which they make the proposition that if all certificates are cancelled, without further litigation, they will have

all the lands returned for taxes for back assessment for the years 1921, 1922 and 1923, and for the present assessment for the year 1924; where as, if they are required to litigate the matter to a finish they will oppose back assessment as far as possible. Litigation could not be brought to a close in time to get the back assessment for 1921.

I am writing Counsel admitting the invalidity of the assessment for 1912, but insisting upon the validity of the assessment for 1913, and asking them to pay the taxes for that year, without interest or costs, and then to return for back assessment, and present assessments, as per their suggestion.

You will remember that the same question which is raised in this case as to the certificates issued on levy of 1912 was raised in the settlement of the taxes on lands which were re-conveyed to the State by Mr. Bolles, and under date of July 13, 1921, Mr. Glenn Terrell, as Counsel for the Trustees of the Internal Improvement Fund, addressed a letter to you in which he advised that in his opinion the certificates were void having been issued upon a void assessment.

Yours very truly,
 RIVERS BUFORD,
 Attorney General.

TAXATION—ROAD AND BRIDGE FUND.

Tallahassee, Fla., May 6, 1924.

*Hon. Ernest Amos,
 State Comptroller,
 Tallahassee, Fla.*

Dear Sir:

Replying to your letter of May 5th, I beg to say:
 It is my opinion that, under the provisions of Section

2, Chapter 9585, Acts of 1923, the Board of Bond Trustees of Special Road and Bridge District No. 7 of Putnam County, Florida, are entitled to receive all monies which are to be paid by the State of Florida as the portion due to Putnam County for road and bridge purposes. The provisions of this Section require that such money coming into your hands should be transmitted to this Board of Bond Trustees.

Yours very truly,
RIVERS BUFORD,
Attorney General.

CORPORATIONS—TRUST FUNCTIONS.

Tallahassee, Fla., June 7, 1924.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of June 6th *in re* Proposed Articles of Incorporation of "Donovan & Sons, Inc.," I beg to say:

It is my opinion that Letters Patent containing the words, "to act as Trustee in deeds of trust or mortgages on real estate or personal property" should not issue to any corporation unless such corporation has complied with the provisions of the Trust Statutes.

It appears to be the purpose of Chapter 8531, Acts of 1921, to limit the exercise of trust powers to those companies which shall be organized under the Trust Act.

Yours very truly,
RIVERS BUFORD,
Attorney General.

TAXATION—EXEMPTIONS—SCHOOLS.

Tallahassee, Fla., August 1, 1924.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

I am in receipt of your letter of July 31 in regard to exemptions of five thousand acres of land from taxation claimed by Rollins College.

In reply I beg to say that Chapter 4486, Acts of 1895, appears to be still in force. Section 3 of that Chapter exempts land not exceeding five thousand acres owned and used by Rollins College for educational purposes from all taxes, for State, County and Municipal purposes.

Therefore, it is my opinion that the contention presented by Mr. W. R. O'Neal is correct.

I am returning herewith correspondence submitted with your letter to me.

Yours very truly,
RIVERS BUFORD,
Attorney General.

TAXATION—EXEMPTIONS—LUNATICS.

Tallahassee, Fla., September 1, 1924.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of August 29th with which you transmitted a letter from Messrs. Cockrell & Cockrell of

Jacksonville, Florida, with reference to the exemption of property of a lunatic from the assesment of taxes, I beg to say:

It is my opinion that under the provisions of Section 697, Revised General Statutes of Florida, Sub-paragraph 7, one in the position in which Miss Collins is represented to be is entitled to exemption as therein set forth. I do not think the exemption applies only in cases of physical disability but I think it was intended to apply to all cases of bodily disability, whether of mental or physical nature.

In this connection I may say if Miss Collins has been committed to the Florida State Hospital for the Indigent Insane as an indigent person that this communication from Messrs. Cockrell & Cockrell shows that she has been improperly committed, and as long as she is possessed of property she should be required to pay for her maintenance at that Institution.

I return herewith letter from Messrs. Cockrell & Cockrell to you.

Yours very truly,
RIVERS BUFORD,
Attorney General.

TAXATION—BANKS.

Tallahassee, Fla., September 25, 1924.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

I have your letter of September 24th asking my opinion as to the assessment of taxes against a defunct banking corportaion.

It is my opinion, under the facts stated in your letter, there is nothing except the parcel of land referred to constituting property of the defunct banking corporation which is of any value and, therefore, against which an assessment may be made.

Of course, if the municipal officers conceive it to be their duty to make assessment against the capital stock, I know of nothing to keep them from doing so, but when such assessment is made they would find themselves in the position of being required to write off the assessment as an insolvency,—the institution having become entirely insolvent prior to January 1, 1924, and there being no property in existence upon which such assessment would create a lien.

Yours very truly,
RIVERS BUFORD,
Attorney General.

BANKS—COMPROMISE SETTLEMENTS.

Tallahassee, Fla., October 4, 1924.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

I have your inquiry of the first instant, as follows:

“The Bank of Williston has gone into the hands of a receiver. The stockholders are trying to work out a plan to re-open. It will take considerable cash to do this, as well as depositors accepting time certificates of deposit for a portion of their funds.

“The Bank at the time of its close had on deposit a large amount of public funds, some due the County, some to the School Funds, and to the Special District Funds, especially the Road and Bridge Districts.

"The plan of the stockholders is to have the depositors surrender, or donate, to the Bank 20% of their deposits, which, of course, lessens the amount of liabilities of the Bank and will aid materially in the refinancing of the institution. The question arises, 'Can the County and School authorities, as well as the Trustees of the Special District Funds, legally donate or surrender this 20%.'

"I might add that while the Bank had given depository bonds and put up some of its receivables as security for District Bonds, these bonds and securities are inadequate to cover deposits of public funds."

In my opinion neither the County, School authorities nor Trustees of Special District Funds may lawfully *donate* to the Bank of Williston any portion of the public monies deposited therein by them. They may, however, by participating in a general "Composition with Creditors" by such bank, accept in settlement of a less sum than the full amount of their deposits. While the result may be practically the same, the distinction between the two courses of procedure is clear and material. But they have no authority to accept "time certificates of deposit," as that would be in effect a loan to the bank. While depositors in their own right may properly accept such time certificates, just as they may make loans to the bank, the custodians of public funds may not lend them unless specially authorized by statute.

And, in the event that any of the officers or trustees mentioned shall enter into a "Composition with Creditors," they should, in agreeing to and signing such composition, expressly reserve therein to themselves any security held by them and all rights against any surety, as in the absence of such full and specific reservation, taking the benefit of the composition would operate to extinguish such securities.

Yours very truly,
 RIVERS BUFORD,
 Attorney General.

TAXATION—GOVERNMENT RESERVATIONS.

Tallahassee, Fla., October 14, 1924.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of the 14th instant, asking my opinion as to whether or not the Tax Collector of Columbia County has authority to collect taxes on personal property located within the government reservation situated in that county, I will answer you by quoting from Volume 26, Ruling Case Law, page 100, Section 75, with authorities there cited:

"Private Property on Reservation or in Government Warehouse. It is well settled that a state or territory may tax personal property situated on a government reservation within its limits and not belonging to the United States or to tribal Indians or otherwise exempt from taxation.

"Leavenworth R. Co. v. Lowe, 114 U. S. 525,
5 S. Ct. 995, 29 U. S. (L. ed.) 264;

Thomas v. Gay, 169 U. S. 264, 18 S. Ct. 340, 42
U. S. (L. ed.) 740;

Wagnor v. Evans, 170 U. S. 588, 18 S. Ct. 730,
42 U. S. (L. ed.) 1154;

Foster v. Pryor, 189 U. S. 325, 23 S. Ct. 549 U.
S. (L. ed.) 835;

Rice vs. Hammon, 19 Okla. 419, 14 Ann. Cas. 963
and note."

Yours very truly,
RIVERS BUFORD,
Attorney General.

COUNTIES—TAX OFFICERS—PAYMENT.

Tallahassee, Fla., October 18, 1924.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of October 17th requesting my opinion as to the construction to be placed on that part of Chapter 9362, Acts of 1923, providing for the creation of Collier County, in the State of Florida, and the organization and government thereof which directs the methods and compensation for the payment of the tax assessment of 1923, I beg to say:

It is my opinion that the Tax Assessor of Lee County is entitled to receive pay the same as if all the property on the assessment roll had continued to remain in Lee County during the year of 1923, and that Collier County is bound to reimburse Lee County for such compensation in that proportion which the assessed value of real and personal property subject to taxation within Collier County bears to the total assessed valuation of property originally being in Lee County and appearing on the total assessment roll. In addition thereto the Tax Assessor of Lee County is entitled to \$5.00 a day to be paid by Collier County for each day required in preparing a transcript of the assessment roll for Collier County of that part of the total assessment roll which embraces property lying within the boundaries of Collier County, and is also entitled to receive the sum of \$5.00 a day for each person employed by him for each day that such person was actually engaged in the performance of services required under the provisions of Section 13 and 14 of the Act.

Yours very truly, .

RIVERS BUFORD,

Attorney General.

TAXATION—EXEMPTIONS—HEADS OF
FAMILIES.

Tallahassee, Fla., November 24, 1924.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of November 21st I beg to say that in my opinion the provision of the recently adopted amendment to the Constitution, to-wit:

“There shall be exempt from taxation to the head of a family residing in this State, household goods and personal effects to the value of \$500.00,”

does not apply to taxes assessed as of January 1, 1924.

Yours very truly,

RIVERS BUFORD,

Attorney General.

MOTOR VEHICLES—NEW LAW IN FORCE.

Tallahassee, Fla., November 28, 1924.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of this date, I beg to say it is my opinion that Section 1031, Revised General Statutes of Florida, as amended by Chapter 8410, Acts of 1921, is at this time in full force and effect.

Yours very truly,

RIVERS BUFORD,

Attorney General.

OFFICERS—MISAPPROPRIATION OF FUNDS.

Tallahassee, Fla., December 9, 1924.

*Hon. Ernest Amos,
State Comptroller,
Tallahassee, Fla.*

Dear Sir:

If I clearly understand your letter of December 5th you, in effect, ask my opinion as to the proper answer to the following hypothetical question:

If A, being Clerk of the Circuit Court of..... County, receives into his official custody and possession a certain sum of money which he converts to his own use and fails to account for and pay over as is by law required. This shortage is not discovered by auditors checking A's accounts. A's term of office expires. He is re-elected and assumes the duties of office for a subsequent term. During this subsequent term auditors check him short on two different occasions on items occurring part in the prior term and part in the then current term. This shortage, which does not cover or embrace the item first mentioned, he makes good and continues in office. Before this term expires it is discovered that during his prior term of office he converted the first mentioned sum of money to his own use and has never accounted for or paid over the same as in law and in duty bound. Query: Can A and sureties on his official bond, given to cover his conduct of office during the term in which the shortage occurred be held to pay this shortage occurring in the former term after shortages have been discovered in the first and second term and the items so discovered have been made good?

It is my opinion that under conditions as above stated A and the sureties on his bond are liable for the funds mis-

appropriated during the first term, other shortages and settlements of such other shortages notwithstanding.

I may add it is my opinion that if as much as two years have elapsed since the end of the term in which the first shortage occurred that criminal prosecution based thereon is barred by the statute of limitation.

Yours very truly,

RIVERS BUFORD,

Attorney General.

ATTORNEY GENERAL—REMITTANCE TO TREASURER OF FUNDS SECURED BY SUIT.

Tallahassee, Fla., February 17, 1923.

*Hon. John C. Luning,
State Treasurer,
Tallahassee, Fla.*

Dear Sir:

I hand you herewith check for \$26,191.98, payable to the order of Rivers H. Buford, Attorney General, drawn by The National City Bank of New York, in payment of and in full satisfaction of a final decree entered in the Court of Record in Escambia County in favor of the State of Florida in the case of The State of Florida and Escambia County vs. William H. Beardsley and William R. Kenan, Jr., Trustees of the Last Will and Testament of Henry M. Flagler, deceased.

I also hand you copy of the receipt which I executed on behalf of the State of Florida at the time this check was received by me.

Yours very truly,

RIVERS BUFORD,

Attorney General.

BONDS—INDEMNITY—STATUTES CONSTRUED.

Tallahassee, Fla., July 28, 1923.

*Hon. John C. Luning,
State Treasurer,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of the 27th, asking my opinion as to whether or not Chapter 9152 repeals Sections 4257, 4258, 4259 and 4260, Revised General Statutes of Florida, I beg to say:

It is my opinion that the provisions of Chapter 9152, Acts of 1923, repeal the above quoted Sections of the Revised General Statutes in so far as the provisions of said Chapter are in conflict with the provisions of said Sections, and it appears that the provisions of Chapter 9152 will cover practically all indemnity bonds that may be written in this State, and that, therefore, the provisions of Sections 4259 and 4260, Revised General Statutes, can no longer be involved.

Yours very truly,
RIVERS BUFORD,
Attorney General.

INSURANCE—ADJUSTERS—LICENSE FEE.

Tallahassee, Fla., August 29, 1923.

*Hon. John C. Luning,
State Treasurer,
Tallahassee, Fla.*

Dear Sir:

I have your letter of August 28th in regard to my let-

ter of August 23rd to Mr. A. I. Vorys, 52 East Gay St., Columbus, Ohio, and in reply thereto I beg to say:

Paragraph 6 of Section 911, Revised General Statutes, is as follows:

"For each insurance adjuster, whether resident or non-resident, who has not paid a license as agent or traveling agent, who adjusts insurance losses in this State, each insurance company, association, firm or individual, shall pay to the State Treasurer a license tax of ten dollars."

Note the difference between the language used in this Paragraph and that used in the following Paragraph and you will observe a distinction which appears to have been made in recognition of the well settled principle of law that the business of an insurance adjuster is a recognized profession, which may be followed by any person who has prepared himself for that particular line of business.

The Courts have repeatedly held that: "The calling of an adjuster of insurance is a regular business and profession. He has a right to follow it in any State where his employment calls him. Any law abridging or restricting that right would be void. In adjusting a loss by fire, the agent is not transacting the business of fire insurance in the State as these words are used in the statute." The Courts have also held that: "The adjustment of a loss is merely the means of ascertaining the amount of an admitted indebtedness."

Again it is held in regard to such statutes as those obtaining in Florida that: "Foreign insurance corporations were not to be permitted to come here into our territory and solicit business and take risks unless they would submit to certain conditions imposed for the benefit of those who might deal with them. If they make legal contracts elsewhere, however, relating to property in this State, it is not an advantage, but an injury to the resident property owner to prohibit them from fulfilling such contracts here."

Therefore, it appears clear to me that it was the intent

of the Legislature to provide a regular agency through which any insurance company, whether authorized to do business in this State or not, could adjust its losses occurring in this State under its valid contracts made elsewhere.

It is my opinion, that an insurance company may qualify as an insurance adjuster; that any association may qualify as an insurance adjuster; and that any firm or individual may qualify as an insurance adjuster and pay to the State Treasurer a license tax of Ten Dollars. The statute does not provide that the adjuster shall pay a separate license tax for each company in behalf of which he adjusts insurance.

Paragraph 7 of Section 911, Revised General Statutes, provides that: "For each insurance rate-maker or rate agent, traveling in this State, who makes, fixes or recommends the fixing or adjustment of rates in this State, each insurance company, association, firm or individual *represented by him*, or whose rates *are affected by his services*. * * * * shall pay to the State Treasurer a license tax of twenty-five dollars." This language clearly indicates that it was not the legislative intent to have insurance adjusters conform to the same rules required of agents.

It is not the policy of the law to obstruct any debtor in the process of the fair settlement of his obligations, but it is the policy of the law to aid, and, if necessary, to compel the debtor to proceed to settle his lawful obligations. To say that an insurance company not authorized to do business in Florida shall be precluded from having services of an adjuster in the settlement of its legal obligations occurring by reason of loss in this State would be against public policy and contrary to the principle that valid contracts should be enforced.

Yours very truly,
RIVERS BUFORD,
Attorney General.

INSURANCE—BROKERS DEALING IN INSURANCE
LICENSE FEE.

Tallahassee, Fla., September 15, 1923.

*Hon. John C. Luning,
State Treasurer,
Tallahassee, Fla.*

Dear Sir:

I have your letter of September 12th asking my construction of Section 833, Revised General Statutes of Florida.

I beg to say that a person applying for and receiving from the Tax Collector or County Judge a license for "Brokers dealing in Insurance" is only authorized under such license to deal in insurance policies; that is, he may buy and sell, or loan money upon existing policies. Such license does not authorize one to solicit insurance business, nor to receive applications for policies of insurance to be written, or to receive any money in payment of premiums on insurance policies, or to in any wise act as agent for any insurance company. Such persons are not authorized under such license to negotiate the issuing of an insurance policy and are not authorized to receive or receipt for any money on account or for any contract of insurance, nor to receive or receipt for money from other persons to be transmitted to any insurance company.

A person to be authorized to perform the functions above stated comes within the purview of Section 4256, Revised General Statutes of Florida, and is required to procure his license through the office of the State Treasurer.

I herewith return files transmitted with your letter.

Yours very truly,

RIVERS BUFORD,

Attorney General.

BONDS—MUNICIPAL.

Tallahassee, Fla., January 21, 1924.

*Hon. John C. Luning,
State Treasurer,
Tallahassee, Fla.*

Dear Sir:

In re: Bonds of the Town of Greenville, Florida—\$30,000.00.

I note letter to you from Mr. J. Vickers, under date of January 15th, together with opinion of Mr. John C. Thomson thereto attached.

I would be perfectly willing to advise the State Board of Education to purchase bonds upon Mr. Thomson's approving opinion, but if the State Board of Education wishes to have my approving opinion as Attorney General, it will be necessary for me to have a complete transcript of the record pertaining to the issuance of the bonds because, my opinion as to the validity of the issue must be based upon an inspection of the record and cannot be based upon the opinion of some other attorney, who has based his opinion upon that record.

Yours very truly,

RIVERS BUFORD,

Attorney General.

BANKS—TRUST FUNCTIONS.

Tallahassee, Fla., March 26, 1924.

*Hon. John C. Luning,
State Treasurer,
Tallahassee, Fla.*

Dear Sir:

I have your letter of this date in regard to the Citizens

Bank & Trust Company of Tampa, which company claims the right to exercise trust functions without complying with the provisions of Section 4188, Revised General Statutes of Florida.

I find that the above named company was organized by a Special Charter enacted by the Legislature of 1895 and is contained in Chapter 4460, Acts of 1895.

It appears from the contents of this Special Act that it is not necessary for this company to make the deposit required by Section 4188, Revised General Statutes of Florida. On the other hand, this company is not entitled to all privileges contained in the General Trust Act of 1911. This company, for instance, cannot claim the privilege of exemption from the necessity of making bond or giving other security upon appointment to or acceptance of any office of trust; and, therefore, in its practical operation it is required to secure individually those interests for which it functions in a trust capacity, instead of securing them collectively by deposit with the State Treasurer.

Yours very truly,

RIVERS BUFORD,

Attorney General.

SCHOOLS—SPECIAL DISTRICTS—BORROWING.

Tallahassee, February 20, 1923.

*Hon. W. S. Cawthon,
State Superintendent,
Tallahassee, Fla.*

Dear Sir:

Replying to your inquiry of February 19th, asking my opinion as to whether or not "Special Tax School District indebtedness, notes made by Trustees and other forms of indebtedness made by Trustees with the consent and ap-

proval of the County Board of Public Instruction, constitute part of the eighty per cent borrowing privilege of the County Board of Public Instruction under Section 458, Revised General Statutes of Florida," I beg to say that Paragraph 13 of Section 454, Revised General Statutes, provides that the County Board of Public Instruction shall prepare on or before the first Monday in June of each year an itemized estimate showing the amount of money required for the maintenance of the necessary common schools of their County for the next ensuing scholastic year, etc.

Section 458, Revised General Statutes, provides that the County Board of Public Instruction is authorized to borrow money for the purpose of paying outstanding warrants and for the further purpose of paying any and all legitimate expenses incurred in operating the schools of the County, but provides that it shall be unlawful for the County School Board to borrow any sum of money in any one year in excess of eighty per cent of the amount as estimated by them to be required for the maintenance of the necessary common schools of their County for the next ensuing scholastic year in the manner prescribed in Section 454.

There is no authority vested in Sub-District Trustees to borrow money. Trustees are authorized under Section 576, Revised General Statutes, to perform the usual duties necessary to provide buildings, repair the same, and to purchase libraries and other school appliances, but may only perform such functions by first having the approval of the County Board of Public Instruction as to each contract entered into. If the obligation referred to in your letter was given as an evidence of indebtedness for the rent or construction of a building, the repair of a building, or the purchase of a library, or the purchase of school appliances, which had been approved and authorized by the County Board of Public Instruction, it would constitute an obligation which the County Board of Public Instruction is bound to pay. But the obligation to pay should have

been entered into by the County Board of Public Instruction and not by the Trustees, because Trustees are not authorized to pay out any money and no money of the Sub-District is at the disposal of the Trustees.

It is also my opinion that the County Board of Public Instruction is without authority to borrow money upon the credit of a Special Sub School District and the only authority vested in such Boards to borrow money is that authority prescribed by Section 458, Revised General Statutes, and the limitation of eighty per cent prescribed in this Section applies to the estimate which shall have been made by the County Board of Public Instruction under the provisions of Paragraph 13 of Section 454.

The provisions of these two Sections apply only to money borrowed by the Board and do not apply to other lawful obligations which the Board may undertake. Therefore, if the indebtedness referred to in your letter was for a lawful obligation of the County Board of Public Instruction and not for borrowed money, it should not be figured in the eighty per cent borrowing privilege. But if this obligation is for borrowed money, then because of the fact that the County Board of Public Instruction is only authorized to borrow under the estimate as provided in Paragraph 13 of Section 454, Revised General Statutes, it must be figured as a part of the eighty per cent privilege.

Yours very truly,
RIVERS BUFORD,
Attorney General.

SCHOOLS—ATTENDANCE—AGE.

Tallahassee, Fla., September 20, 1923.

*Hon. W. S. Cawthon,
State Superintendent,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of September 19th, I beg to say that Section 427, Revised General Statutes of Florida, reads as follows:

“UNIFORM SYSTEM OF PUBLIC INSTRUCTION, SCHOOL AGE.—There shall be established and maintained a uniform system of public instruction free to all youth residing in the State between the ages of six and twenty-one years, as far as the funds will admit, as hereinafter provided.”

Therefore, it will be seen that under the law of this State the uniform system of public instruction is established and maintained *free to all* the youth residing within the State between the ages of six and twenty-one years. There is no provision of law which authorizes any official to close the door of the public schools to any youth in this State because of the marriage of such youth.

It is my opinion that neither a County Board of Public Instruction nor a Board of Trustees of a Special Tax School District, nor any teacher, has authority to prohibit a person between the ages of six and twenty-one years from attending the public school solely upon the ground that such person is married.

Yours very truly,
RIVERS BUFORD,
Attorney General.

SCHOOLS—SPECIAL DISTRICTS—DEBTS.

Tallahassee, Fla., November 7, 1923.

*Hon. W. S. Cawthon,
State Superintendent,
Tallahassee, Fla.*

Dear Sir:

I have your request of this date that I advise you "whether or not the Board of Trustees of a Special Tax School District has authority to incur debt by a loan from a bank or on a mortgage to the owner of property in purchasing said property for school purposes."

Replying thereto I beg to say it is my opinion that this question is directly decided in the case of *Leonard, et al., v. Franklin, et al.*, reported in 93 Sou., page 688, in which opinion the Court say:

"Sec. 17. The Legislature may provide for special tax school districts, to issue bonds for the exclusive use of public free schools within any such special tax school district, whenever a majority of the qualified electors thereof, who are freeholders, shall vote in favor of the issuance of such bonds.

"Whenever any such special tax school district has voted in favor of the issuance of such bonds, a tax not to exceed five mills on the dollar, in any one year, on the taxable property within the district voting for the issue of bonds shall be levied in accordance with law providing for the levying taxes, to become a fund for the payment of the interest and redemption of such bonds.

"The principle is well established that where the Constitution expressly provides the manner of doing a thing, it impliedly forbids its being done in a substantially different way. State ex rel.

Church v. Yeates, 74 Fla. 509, 77 South. 262;
 State ex rel. Murphy v. Barnes, 24 Fla. 29, 3
 South. 433."

In view of this decision, it is my opinion that neither the County Board of Public Instruction nor the Trustees of a Special Tax School District have the authority to pledge the credit of the District for the purpose of acquiring permanent school property except by the method prescribed by the Constitution.

If the Trustees, or the County School Board, has on hand sufficient money to acquire the property desired, I do not think it would be necessary to issue bonds, but in such event, they could use funds on hand, if the same were not otherwise allocated, for such purpose.

There can be no material difference between the right of such Boards to issue interest bearing time warrants for the purpose of acquiring permanent school property and the right to execute and issue interest bearing notes for a like purpose.

In my opinion the provisions of Section 576, Revised General Statutes, only authorize the Trustees, with the consent and approval of the County Board of Public Instruction, to incur the ordinary or usual obligations incident to the the conduct of the schools within the District.

Yours very truly,

RIVERS BUFORD,

Attorney General.

SCHOOLS—BUILDINGS—ADVERTISING.

Tallahassee, Fla., October 13, 1924.

*Hon. W. S. Cawthon,
 State Superintendent,
 Tallahassee, Fla.*

Dear Sir:

Replying to your letter of even date I beg to say it is

my opinion that a County Board of Public Instruction is not authorized to expend public funds except in the manner and when following the method prescribed by statute, and where such Board proposes to expend the sum of \$5,000.00 in the erection of improvements of a school building that the contract must be let upon plans and specifications prepared for that purpose and after advertising the same for a period of 30 days to the lowest responsible bidder.

Yours very truly,
RIVERS BUFORD,
Attorney General.

SCHOOLS—HOLIDAYS—ARMISTICE DAY.

Tallahassee, Fla., October 28, 1924.

*Hon. W. S. Cawthon,
State Superintendent,
Tallahassee, Fla.*

Dear Sir:

Replying to your communication of October 27th I beg to say:

Chapter 9326, Laws of Florida, Acts of 1923, constitutes November 11th, Armistice Day, of each year a legal State holiday. Therefore, it is proper for this date to be observed as a legal holiday in all public departments of the State, including the public schools.

Yours very truly,
RIVERS BUFORD,
Attorney General.

SCHOOLS—ATTENDANCE—RESIDENCE.

Tallahassee, Fla., December 20, 1924.

*Hon. W. S. Cawthon,
State Superintendent,
Tallahassee, Fla.*

Dear Sir:

I have your letter of December 20th as follows:

“Please give me your opinion upon the following question: Do the children of parents who reside in a county of Florida, and have decided to become citizens of that county, have a right to attend the public schools of the district in which they live without the payment of tuition even though they may not have resided in the county for a period of six months?”

Chapter 7808, Acts of 1919, requires every parent, guardian or other person having citizenship within the State of Florida, having the custody, control or charge of any child or children within the State of Florida between the ages of 7 and 16, both inclusive, under conditions stated in the Act to send such children to school.

I find no authority of law authorizing the charge of tuition to the parents for the privilege of sending children to the public schools of this State.

When a person becomes a resident of a particular Special Tax School District, or a General School District, such person becomes immediately entitled to the benefits of the public schools within such District without the necessity of paying tuition. The matter of residence is one which must be determined by the person exercising the same. A person establishes his residence by taking up his domicile at a certain place with the intention of remaining there. As long as this intention remains fixed his residence continues regardless of how short a time he may have so resided. Having established his residence within

a Special Tax School District there is no legal authority in this State to deny him the school privileges of that District.

It would be proper for the school officers in doubtful cases to require affidavits of the parties to the effect that they have in good faith taken up and established what they intend to be a permanent residence within the District in which they claim the right to school privileges.

It is my opinion that any person who is denied free school privileges within the District in which such person resides may successfully maintain mandamus proceedings in the Circuit Court to compel the school officials to allow such person the same school privileges that are accorded to the residents of the District without tuition or compensation.

Yours very truly,
RIVERS BUFORD,
Attorney General.

FERTILIZERS—TAGS.

Tallahassee, Fla., July 11, 1923.

Hon. W. A. McRae,
Commissioner of Agriculture,
Hon. R. E. Rose,
State Chemist,
Tallahassee, Fla.

Gentlemen:

I have your letter of July 9th in which you ask my opinion as to whether or not you may add the words "Total Ammonia . . . per cent" in the delineation of analysis contained on fertilizer tags which are to show the "Guaranteed Analysis" of the fertilizer to which the same is applied.

In reply to this question I beg to say that I do not think such addition violates the law providing: "there shall be no other statement on the tag." It is my opinion that this provision of the law refers to matters not properly included in the statement of guaranteed analysis.

You also request my opinion as to whether or not you may change the form of the letter of transmissal not changing the substance thereof as is prescribed by statute.

It is my opinion that the form suggested in your letter substantially complies with the statute and is in many respects a better form than that which is prescribed in the statute, and I think it will be entirely legal for you to use such form letter.

I do not think that you are authorized to fix a limit of time after the receipt of the fertilizer by the purchaser in which to draw the samples. Under the decision of our Court it is held that the law contemplates: "That the test shall be made with at least some degree of promptness after the delivery of the fertilizer." I do not think that the office of the Commissioner of Agriculture can assume to definitely fix what may be a reasonable time, but I do think that it is proper for you to promulgate a rule to the effect that the samples must be drawn within a reasonable time after the purchase, and that samples should be drawn within a period of 60 or 90 days at the outside, and that samples drawn after the expiration of such time cannot be given the same credence that would have obtained had such samples been drawn at an earlier date.

Yours very truly,

RIVERS BUFORD,

Attorney General.

CITRUS FRUITS—DESTRUCTION.

Tallahassee, Fla., October 12, 1923.

*Hon. W. A. McRae,
Commissioner of Agriculture,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of October 12th I beg to say that I do not think the Commissioner of Agriculture is authorized under Section 180, Revised General Statutes of Florida, to issue orders of confiscation and destruction of immature citrus fruit. It is my opinion, that such fruit should be disposed of under the provisions of Section 2041, Revised General Statutes of Florida.

Yours very truly,
RIVERS BUFORD,
Attorney General.

COMMISSIONER OF AGRICULTURE—PRINTING
CONTRACT.

Tallahassee, Fla., November 6, 1923.

*Hon. Nathan Mayo,
Commissioner of Agriculture,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of November 6th in regard to printing contract, I beg to say that you can best get the conditions and terms of the contract as it applies to various publications of the Department of Agriculture by reference to the contract itself. Most of this contract is

on printed forms and you can get copies of these forms from the Secretary of the Board of Commissioners of State Institutions and make copies of that part of the contract which applies to the Department of Agriculture.

It is my opinion that the quarterly and supplementary bulletins published by the Department of Agriculture are not included in the contract, except in this respect, that there is a clause in the agreement which requires the department to give the State Printer an opportunity to bid on work to be let on separate contracts. If the printing of the bulletin is not let to the State Printer, then under the statute it must be let on competitive bids.

The contract prices which would apply to the items mentioned in your letter are as follows:

Departmental Printing:

10 point type based on 50 pound Warren Buck paper.

300 copies—1.30 per page; each additional 50 copies 10c per page.

500 copies—\$1.70 per page

1000 copies—\$2.70 per page; additional 500 copies 55c per page.

Covers of same material as used in Bulletin at the same price. Regular cover material calls for double price per page.

Agricultural Statistic Blanks—Form 601:

5000—\$325.00; each additional 1000—\$45.00.

Agricultural Enumeration Blanks—Form 629:

250 sheets, 500 pads—\$350.00; each additional 100 sheets—\$50.00 per hundred.

Yours very truly,

RIVERS BUFORD,

Attorney General.

STATE CHEMIST—CHECK ANALYSIS.

Tallahassee, Fla., May 8, 1924.

*Hon. Nathan Mayo,
Commissioner of Agriculture,
Hon. R. E. Rose,
State Chemist,
Tallahassee, Fla.*

Gentlemen:

Replying to your letter of May 6, I beg to say:

I see no reason why samples No. 6099 and No. 6100, reported November 17, 1923, are not subject to check analysis at this time as it appears from your letter that the same have been kept properly sealed and protected.

While the statute provides that the purchaser shall report to the State Chemist within the time limit provided by law, there appears to be no prohibition against a check analysis after the expiration of that time. It appears to me that it is proper to make a check analysis at any time when the samples are preserved in the office.

It appears to me that it would be proper for your office to make a check analysis upon the request of the purchaser, the jobber or the manufacturer.

My construction of the statute is that the 90 day limit embraced therein is for the purpose of discouraging delays and is merely directory. If the office of the State Chemist keeps the samples for a period of 90 days and during that period receives no notice that they will be further required, he then has the right to destroy the samples and no person has any right to complain; but if he should not destroy the samples, and knowledge of the contents of same should be desired by any interested person or if a re-check of the analysis is desired by an interested person, it is proper for

the State Chemist to proceed just as if the request had been made within the 90 days.

Yours very truly,
RIVERS BUFORD,
Attorney General.

CONVICTS—REGULATIONS.

Tallahassee, Fla., May 9, 1924.

*Hon. Nathan Mayo,
Commissioner of Agriculture,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of May 8th, in which you enclose letter from Mr. F. L. Stringer, Attorney for the County Commissioners of Hernando County, I beg to say:

It is my opinion that if the Commissioner of Agriculture should promulgate rules and the same should be approved by the Board of Commissioners of State Institutions authorizing County convicts to be worked in the manner suggested in Mr. Stringer's letter, it would be lawful to so work such convicts, except that I do not think the County Commissioners could assume to pay wages to convicts.

I can hardly think, however, that the Commissioner of Agriculture could consistently promulgate such rules or that they could be approved by the Board of Commissioners of State Institutions. Such rules would practically mean that county convicts would either stay at work or leave as they deemed fit and proper. Persons convicted of crime are punished for the welfare of society and it is entirely immaterial whether or not convicts can be handled profitably. The law does not contemplate that any profit shall be made for the punishment of prisoners. An arrangement such as is suggested would, it appears to me,

invite all county convicts to make their escape and evade punishment. Of course, you could not promulgate rules for the working of convicts in one county which would not apply to all counties alike.

Yours very truly,

RIVERS BUFORD,

Attorney General.

FERTILIZERS—SAMPLES.

Tallahassee, Fla., June 30, 1924

*Hon. Nathan Mayo,
Commissioner of Agriculture,
Tallahassee, Fla.*

Dear Sir:

I have your letter of June 27th asking me to advise you whether or not in case a lot or shipment of fertilizer contains more than ten packages, 250 packages for instance, a sample drawn from ten per centum of the shipment, or from twenty-five packages, would be a legal sample under the provisions of Section 2405, Revised General Statutes of Florida, as amended by Chapter 9128, Acts of 1923.

I think that such samples taken under the provisions of the statute would comply with the law in that regard.

Yours very truly,

RIVERS BUFORD,

Attorney General.

FERTILIZERS—PACKAGE—WEIGHT.

Tallahassee, Fla., July 8, 1924.

*Hon. Nathan Mayo,
Commissioner of Agriculture,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of July 1st which I found upon my desk upon returning to the office this morning, I beg to say:

It appears to me that your construction of Section 2401 and Section 2398, Revised General Statutes of Florida, as amended by Chapter 9127, Acts of 1923, is correct and that the law requires fertilizers offered for registration to be in packages of 50 pounds, or multiples thereof, and you are, therefore, without authority to register fertilizer, or fertilizing materials, to be distributed in packages of other weights.

I am returning the files herewith as requested.

Yours very truly,
RIVERS BUFORD,
Attorney General.

COMMISSIONER OF AGRICULTURE—BULLETINS.

Tallahassee, Fla., July 12, 1924.

*Hon. Nathan Mayo,
Commissioner of Agriculture,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of July 11th asking my opinion as to whether or not the expense of printing Semi-Annual

Bulletins, giving the analysis of the various samples of gasoline and kerosene drawn by the Inspectors of the Oil Division and tested in the State Laboratory can be properly paid for from the receipts of the Oil Division collected under the provisions of Chapter 7905, Acts of 1919, I beg to say:

It is my opinion that if the publication of such Semi-Annual Bulletin is necessary incident to the administration of the Act, then such expense is a proper item to be paid from such fund. It is for you to determine, except where directed specifically by statute, what is proper and necessary to be done in the administration of the Act, and it is, therefore, your duty to determine whether or not the publication of these Semi-Annual Bulletins is a necessary step to be taken in the proper administration of the Act.

Yours very truly,

RIVERS BUFORD,

Attorney General.

CENSUS—TIME FOR ENUMERATION.

Tallahassee, August 1, 1924.

*Hon. Nathan Mayo,
Commissioner of Agriculture,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of this date asking my construction of Chapter 9183, Acts of 1923, and especially as to the provision of Section 5 of such Act, I beg to say:

It is my opinion that the provisions of Section 5 are merely directory and that the language used should be construed to mean that the Commissioner of Agriculture shall have all necessary blanks in the hands of the enumerators not later than February 15th so that the act of actually

beginning the enumeration would be not later than that date. The Act requires the enumeration to be made during the year 1925 and to be finished not later than the 15th day of April. Therefore, it in my opinion is your duty as Commissioner of Agriculture to facilitate the work as rapidly as possible and, therefore, to have everything in readiness for the enumeration to begin as early in the year 1925 as it is possible to do so, but by all means to have nothing undone later than the 15th day of February which is required to be done in your office before the enumeration starts.

Yours very truly,
RIVERS BUFORD,
Attorney General.

FOODS AND DRUGS—NEAR BEER.

Tallaassee, Fla., September 27, 1924.

*Hon. Nathan Mayo,
Commissioner of Agriculture,
Tallahassee, Fla.*

Dear Sir:

I am in receipt of your letter of September 26th reading as follows:

"I would be pleased to have your opinion as to whether or not Sections 5458 to 5490 of the Revised General Statutes, supersedes and revokes Section 2041 of the Revised General Statutes with particular reference to labeling articles of intoxicating beverages, and also whether or not so called near beer, containing more than one-half of one per cent alcohol is classed as a food and subject to seizure in case such packages are not labeled in accordance with the provisions of Section 2041, of the Revised General Stautes."

Replying to the above question I beg to say it is my opinion that Sections 5458 to 5490, Revised General Statutes of Florida, do not revoke Section 2041, Revised General Statutes of Florida. The rule of construction of contemporaneous statutes is that they must be construed together, and must be both given full force and effect if possible. The enactment of the Revised General Statutes made all statutes therein contained contemporaneous regardless of when the same were originally enacted by the Legislature.

Section 2037, Revised General Statutes of Florida, last paragraph, reads as follows:

"The term 'food' as used herein shall include all articles used for food, drink, confectionary, or condiment by man or other animal, whether simple, mixed or compound."

Therefore, if so called near beer is offered for sale to be used as a drink, it comes within the purview of the Pure Food and Drug Act, and is subject to seizure if in offering the same for sale the provisions of that Act are not complied with.

It is also subject to seizure under the Prohibition Law if all the requirements of the Pure Food and Drug Act have been complied with and it contains a higher percentage of alcohol than that allowed by the Prohibition Law, but the fact that it does contain a prohibited percentage of alcohol will not exempt it from the requirements contained in the Pure Food and Drug Acts.

Yours very truly,

RIVERS BUFORD,

Attorney General.

LANDS—JAPANESE

Tallahassee, Fla., November 15, 1924.

*Hon. Nathan Mayo,
Commissioner of Agriculture,
Tallahassee, Fla.*

Dear Sir:

There is no statute existing in the State of Florida which in any way precludes Japanese from owing real estate in fee simple, or from holding real estate under lease or otherwise.

Yours very truly,
RIVERS BUFORD,
Attorney General.

CENSUS—ENUMERATOR—SUPERVISOR OF REGISTRATION.

Tallahassee, Fla., December 11, 1924.

*Hon. Nathan Mayo,
Commissioner of Agriculture,
Tallahassee, Fla.*

Dear Sir:

Replying to your communication of December 10th, I beg to say it is my opinion that under Section 15 of Article XVI of the Constitution of the State of Florida a Supervisor of Registration is precluded from exercising the functions of any other office and, therefore, could not occupy the position of a Census Enumerator.

Yours very truly,
RIVERS BUFORD,
Attorney General.

SEMI-OFFICIAL OPINIONS

Not required under the Statutes of Florida.

The following are a few of these communications such as may be of interest to the public generally:

ADJUTANT GENERAL—BONDS—SUIT IN NAME
OF GOVERNOR.

Tallahassee, Fla., May 11, 1823.

*General J. Clifford R. Foster,
Adjutant General,
St. Augustine, Fla.*

Dear General Foster:

Replying to your favor of the 10th instant.

Money collected upon a bond made to the State or to the Governor and his successors in office by a military officer or employee would not be payable into the State Treasury, whether collected by suit or otherwise. In a suit on such a bond in the name of the State or of the Governor it or he would be a merely nominal plaintiff, the real party in interest being the individual, officer, Board or Department injured by the breach of the bond. Such suits are maintained in the name of the State or Governor "for the use of" the injured party. In such cases, it is not necessary even to obtain the consent of the Governor or of the State, as the case may be, to file or prosecute such a suit; generally it or he knows nothing about it; nor are they in any way responsible for costs or expenses of suit.

The better and general practice is to make such bonds payable to the "Governor of Florida and his successors in office," and no injury or inconvenience to any officer or

branch of the Military Department can possibly result from having them so made payable.

Were the "Military Department" an entity capable of suing, it would still be necessary to sue in its name, as the nominal plaintiff, "for the use of" the particular individual, officer, board, etc., entitled to the money sued for, and to whom or which it would be payable when collected.

I advise that your amendment should be changed so as to make the bonds payable to the Governor and his successors in office.

Yours very truly,
RIVERS BUFORD,
Attorney General.

ADJUTANT GENERAL—TAXATION—LICENSE—
CONFEDERATE VETERANS.

Tallahassee, Fla., August 15, 1924.

General J. Clifford R. Foster,
Adjutant General,
St. Augustine, Fla.

My dear General:

Your favor of August 14th has been received and in reply I beg to say that Confederate Veterans are the only War Veterans authorized to peddle without license in this State.

See Section 995, Revised General Statutes of Florida, for the exemption provided.

Yours very truly,
RIVERS BUFORD,
Attorney General.

SHELL FISH COMMISSIONER—LICENSE TAX—
ALIENS.

Tallahassee, Fla., February 12, 1923.

*Hon. T. R. Hodgés,
Shell Fish Commissioner,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of February 6th in which you explain what information was desired when you made request of this office, under date of January 10th, for an opinion as to whether or not Section 1 of Chapter 8590, Acts of 1921, repeals or in any way affects Section 1262, Revised General Statutes of Florida, I beg to say:

It is my opinion that the Supreme Court decision in the case of McLain vs. West governs the application of Section 1262, Revised General Statutes of Florida, as to aliens or non-residents employed on boats or vessels owned wholly by citizens and residents of this State engaged in taking or catching any kind of fish for commercial purposes from the waters of the Atlantic Coast within the jurisdiction of the State of Florida. The controlling part of that decision referring to an alien or non-resident so employed reads as follows:

“If he is employed as engineer, oarsman, pilot or sailor, or in any capacity, upon a boat engaged in the fishing industry he is required by the law to pay the tax whether he ever casts a net or throws a fishing line or not; but if he is upon a boat which is not engaged in the fishing industry and fishes for purposes other than his own individual use, or without the use of a boat fishes for such purposes, he is required to pay the license tax of ten dollars. The last paragraph of the section exempts all persons from the pro-

visions of the act who fish *only* with hook and line or with rod and reel or similar device."

Yours very truly,

RIVERS BUFORD,

Attorney General.

SHELL FISH COMMISSIONER—WATER BOTTOM
LEASES.

Tallahassee, Fla., October 31, 1923.

*Hon. T. R. Hodges,
Shell Fish Commissioner,
Tallahassee, Fla.*

Dear Sir:

I have your favor of the 30th instant, informing me, in substance, that one William Lee Popham claims title to and ownership of 40 acres of water bottoms in Franklin County which was leased to one Otto Hoppe under the laws in force prior to June 1, 1913; that said Popham is asserting such title and ownership by and through a certain chancery suit now pending in said County; that said Hoppe had not prior to June 1, 1913, bona fide complied with the requirements of the law under which the lease or grant of said water bottom to him was made; that such non-compliance was reported by you as Shell Fish Commissioner to the Commissioner of Agriculture, but that no legal proceedings have been instituted to vacate such lease or grant; and that said William Lee Popham holds or controls 500 acres of such water bottoms exclusive of the 40 acres heretofore leased or granted to said Hoppe; and that, therefore, the said Popham holds or controls or seeks to hold and control more than 500 acres of such water bottoms, in violation of the provisions of Section 1243, Re-

vised General Statutes; and asking my opinion in the premises.

The provisions of Section 1231, Revised General Statutes relating to forfeiture of grants of water bottoms made prior to June 1, 1913, for failure to comply with the requirements of the law under which such grants were made, are not self-executing; the grant to Hoppe, not having been vacated by a judgment of a court of competent jurisdiction, is still in force, though probably subject to vacation by proper legal proceedings. However, that question is immaterial so far as the asserted ownership and control of water bottoms by Popham is concerned.

If Popham holds or controls, or is seeking or attempting to hold or control the water bottom specified in the grant to Hoppe, and the acreage thereof added to that of the other water bottoms held or controlled by him make an aggregate of more than 500 acres, then, in such case, he has forfeited all leases held by him to such water bottoms; such forfeiture, of course, to be declared and enforced by appropriate legal proceedings.

Yours very truly,

RIVERS BUFORD,

Attorney General.

SHELL FISH COMMISSIONER—SPECIAL
COUNSEL.

Tallahassee, Fla., December 13, 1923.

*Hon. T. R. Hodges,
Shell Fish Commissioner,
Tallahassee, Fla.*

Dear Sir:

I am in receipt of your inquiry of the 11th instant relative to payment of fees of Special Counsel employed by

6—Atty.

the Commissioner of Agriculture by and with the consent of the Attorney General, to represent the said Commissioner and the Shell Fish Commissioner, in the suit brought against them by the Apalachicola Land & Development Company to enjoin the further leasing of oyster bottoms in St. Vincent's Sound.

I have examined Sections 1234, 1267 and 1277, Revised General Statutes of Florida, which provide for and control in such matters, and, in my opinion, the reasonable fees of such additional Counsel are a proper charge against the Shell Fish Fund, and are payable from that fund when approved by the Shell Fish Commissioner.

Yours very truly,

RIVERS BUFORD,

Attorney General.

SHELL FISH COMMISSIONER—REPLEVIN OF
ILLEGAL NETS.

Tallahassee, Fla., January 5, 1924.

*Hon. T. R. Hodges,
Shell Fish Commissioner,
Tallahassee, Fla.*

Dear Sir:

In a communication, to which this is attached, I have expressed the opinion as to the correctness of which I have no doubt, but I think some further observation may be pertinent, though not advisable to be stated in that communication.

While, as a matter of law, replevin does not lie by one "charged with the illegal possession or use of nets" to regain possession of such nets seized by an officer, yet such writs are often issued; nor can it well be prevented. Where such nets are taken from the officer by means of

such writ he would have to give bond in order to re-replevy the same just as would the defendant in any other replevin case. However, I do not think it either advisable or necessary for such action to be had in any case.

If the affidavit for the writ of repliven shows on its face (as it probably will not in any case) that the nets were seized by the officer as being illegally possessed or illegally used, motion should be made in court issuing the writ that the writ be dismissed. If, however, the affidavit does *not* show on its face that the nets were seized and are held by the officer under the charge of having been illegally used or possessed, then the sheriff or other officer should file a plea in the nature of a plea in abatement, setting out the facts pertaining to their seizure. This would present the only issue to be tried,—the guilt or innocence of the party would not be involved. If, upon the trial, it is shown that the nets are or were held by virtue of seizure for violation of the law by their possession or use, judgment should be for the officer,—that the property be returned to him or that he recover their value as in other cases of replevin. In case of adverse holding by the court, the officer should take writ of error to Supreme Court. This will probably be necessary before the practice complained of will stop, and care should be taken to see that bond is given adequate in amount and sufficient as to sureties ability and solvency. A good size judgment against the accused and his bondsmen in the replevin suit would have a salutary effect.

Yours very truly,

RIVERS BUFORD,

Attorney General.

SHELL FISH COMMISSIONER—REPLEVIN OF
ILLEGAL NETS.

Tallahassee, Fla., January 5, 1924.

*Hon. T. R. Hodges,
Shell Fish Commissioner,
Tallahassee, Fla.*

Dear Sir:

I have your inquiry of the 2nd instant, in which you request my opinion as to whether or not a writ of replevin would lie against the sheriff for return of illegal fishing nets seized and held for forfeiture under the provisions of Section 5826, Revised General Statutes of Florida.

In my opinion, illegal nets, seized by a sheriff or other officer, as authorized by said Section, are not the subject of replevin, and the taking of such nets by replevin from an officer by whom they have been so seized is an illegal act.

The possession of illegal nets, and the illegal use of nets not themselves of an illegal character, constitute violations of the criminal laws of this State enacted for the purpose of breaking up illegal fishing.

The statutes provide, as one of the methods of effecting such purpose, that nets illegally possessed or illegally used shall, upon conviction of the offender, be considered a nuisance and destroyed.

When proceedings are commenced under the statutes by the seizure of nets alleged to be possessed or used in violation of law, it is not competent for a party to take the case away from the tribunal whose jurisdiction has attached by instituting an action of replevin and regaining possession of the nets. He can not so bring about a change of forum,—he can not so change a criminal proceeding into a civil one.

To suffer a party, by an action of replevin, to take the

nets out of the hands of the officer seizing them would be an interference with the administration of justice in criminal proceedings, and would defeat the whole object and intention of the law against illegal fishing. By that law, the possession, or use of certain kinds of nets is prohibited; the nets so possessed or used are declared a nuisance, and must be destroyed.

It is apparent that if they may be replevied out of the hands of the officer seizing them, there will be very few instances in which the object of the statute will be attained by the destruction of the nets possessed or used contrary to law. Nets so seized are in the custody of the law in a criminal proceeding, awaiting the action of the court under the law, by which it is to be ascertained whether or not they were illegally possessed or used and liable to a judgment that they be destroyed. While such proceedings are pending and undetermined the nets are not the subject of an action of replevin.

At common law, an attempt by a party, charged with the illegal possession or use of such nets, to regain their possession by a writ of replevin would be deemed a contempt of the jurisdiction of the Court in which the criminal case was pending.

Whether or not a party charged with a violation of the law by the illegal possession or illegal use of fishing nets is entitled to the possession of such nets, is dependent alone upon the question of his guilt or innocence of the charge; and that question is to be determined in the criminal proceedings and not otherwise, nor in any other court.

The same principle applies in cases of this sort as in cases where goods alleged to have been stolen are seized and taken from possession of the supposed thief; or in cases of arrest upon charges of carrying concealed weapons.

It is not reasonably conceivable that any court would sustain an action of replevin by one accused of theft for a return of the goods charged to have been stolen, or by a pistol totor for return of the weapon taken from him

before trial and acquittal. And yet, that course would be no more illegal or improper in such cases than it is or would be in the matter of illegal nets seized by an officer of the law.

Yours very truly,
 RIVERS BUFORD,
 Attorney General.

SHELL FISH COMMISSIONER—EXPENSES.

Tallahassee, Fla., January 19, 1924.

*Hon. T. R. Hodges,
 Shell Fish Commissioner,
 Tallahassee, Fla.*

Dear Sir:

In reply to your inquiry of this date, I beg to advise that in my opinion payment of proper expenses incurred by your department in enforcing the laws pertaining to the fishing industry, as provided by Section 1277, Revised General Statutes, is not limited by the appropriations provided by Chapter 9121, Acts of 1923, under the title of "Shell Fish Commission,"—the appropriations there made are payable out of the general revenue fund, and do not operate to repeal the provisions of said Section 1277.

So far as the fishing industry is concerned, the appropriations made by the Act of 1923 are supplementary to those provided for by Section 1277 of Revised Statutes, which remains in full force and effect. I am, therefore, of the opinion that the Comptroller is authorized to issue warrants payable out of Shell Fish Fund for any purpose for which he was so authorized prior to the Act of 1923.

Yours very truly,
 RIVERS BUFORD,
 Attorney General.

SHELL FISH COMMISSIONER—REFUND ON
FREIGHT CHARGES.

Tallahassee, Fla., January 25, 1924.

*Hon. T. R. Hodges,
Shell Fish Commissioner,
Tallahassee, Fla.*

Dear Sir:

I have conferred with Hon. James E. Calkins, Attorney for the Florida Railroad Commissioners, relative to proceedings against Seaboard Air Line Railway Company to secure refund of overcharge on oil shipped from Jacksonville to Apalachicola as suggested in your letter of the 21st instant.

There is now pending an action by mandamus instituted by the Railroad Commissioners to require the railroad companies operating in this State to apply intrastate rates to shipments of the character mentioned by you. But it may, and probably will be several years before that proceeding is finally determined, and as suit would have to be brought to recover overcharges in the event of a decision favorable to the Commissioners it is deemed advisable to bring such suits as early as practicable and not to await determination of the mandamus proceedings.

The Railroad Commissioners will, therefore, institute suit in your behalf as you request upon being furnished with the necessary data, such as bills of lading, freight receipts quoted rates, correspondence relative to the matter, etc., and a detailed statement of all the facts and circumstances pertaining to it.

I suggest that you furnish the above data to Mr. Calkins and confer with him personally as he can better indicate just what information he needs in order to properly prepare for and prosecute the suit.

Yours very truly,

RIVERS BUFORD,

Attorney General.

STATE CHEMIST—INSPECTORS.

Tallahassee, Fla., July 25, 1923.

*Capt. R. E. Rose,
State Chemist,
Tallahassee, Fla.*

Dear Sir:

I have read your letter of the 20th. I gather from the contents of this letter that you wish my opinion as to the construction to be placed upon the Appropriation Bill of 1923 in so far as it touches the Department of Agriculture and the office of the State Chemist.

I have given this matter consideration and find that there is no authority or law for the appointment of Inspectors, Chemical Division, and, therefore, an appropriation made to cover salaries of such Inspectors is surplusage in the bill.

The Appropriation Bill provides for salaries aggregating \$7200.00 per year for Four Feed, Drug, Fertilizer and Oil Inspectors, payable from the Oil Inspection Fund. Existing statutes contemplate the appointment of Three Oil Inspectors, and four Food, Drug and Fertilizer Inspectors. The office of Food, Drug and Fertilizer Inspectors is entirely different from the office of Oil Inspectors.

The course to be pursued in regard to the appointment of the several Inspectors is a matter to be determined by the Governor, and as to which it would not be proper for me to assume to render an opinion unless requested to do so by him.

Yours very truly,
RIVERS BUFORD,
Attorney General.

STATE CHEMIST—INSPECTORS—EXPENSES.

Tallahassee, Fla., February 19, 1924.

*Capt. R. E. Rose,
State Chemist,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of the 14th instant in regard to the traveling expenses of the State Chemist and Assistant State Chemists when performing the duties of "Inspectors of Chemical Division," I beg to say:

It is my opinion that the State Chemist and Assistant State Chemists when required to travel in the performance of their statutory duties as Inspectors of the Chemical Division of the Department of Agriculture should keep an itemized statement of their respective expense accounts and should render a statement and account thereof against the State of Florida and that the amount of the same should be reimbursed to them from that fund provided in the Appropriation Bill of the Acts of 1923, which is appropriated for traveling expenses of State Chemists and Inspectors.

Yours very truly,
RIVERS BUFORD,
Attorney General.

STATE CHEMIST—INSPECTORS—EXPENSES.

Tallahassee, Fla., August 2, 1923.

Capt. R. E. Rose,
State Chemist,
Tallahassee, Fla.

Dear Sir:

Replying to your letter of the 27th ultimo, I beg to say: Section 177, Revised General Statutes of Florida, provides that the State Chemist and Assistant State Chemists shall be inspectors of fertilizers, and that they shall be under the general direction and supervision of the Commissioner of Agriculture. Therefore, I advise you that either the State Chemist or an Assistant State Chemist is authorized under the law to make inspections of fertilizers and that when so acting such Inspector is entitled to be reimbursed for his necessary traveling expenses, chargeable to the item in Appropriation Bill: "Traveling Expense Chemists and Inspectors." Such bills for expense should be approved by the Commissioner of Agriculture and the State Chemist.

Food, Drug and Fertilizer Inspectors are required to perform their duties under instructions of the Commissioner of Agriculture and the State Chemist, and such Inspectors may draw samples under the direction of the Commissioner of Agriculture or the State Chemist. Of course, in case of conflict between the Commissioner of Agriculture and the State Chemist the directions of the Commissioner of Agriculture should govern, because the State Chemist is under the direction of the Commissioner of Agriculture.

The State Chemist has no supervision over the vouchers of Inspectors appointed under the provisions of Section 179, Revised General Statutes of Florida, for salary or expense account.

As to what proof or evidence in regard to samples taken by Inspectors should be submitted with the sample to the State Chemist is a matter which the Attorney General is not authorized to determine, but which must be controlled by the decision of the Commissioner of Agriculture and the State Chemist in promulgating regulations and instructions to the Inspectors.

I do not think that it would be found satisfactory to adopt a rule by which the State Chemist could direct Inspectors without conference with the Commissioner of Agriculture to proceed to any place or do any particular work. The better plan is for them to be responsible to the Commissioner of agriculture and for the State Chemist to reach them through the Commissioner of Agriculture. However, this too is a matter which can only be determined by the Commissioner of Agriculture and the State Chemist.

I think I have answered the other questions contained in your letter except that which is answered by copy of my letter to Hon. Ernest Amos, State Comptroller, of this date, which I attach herewith.

Yours very truly,
 RIVERS BUFORD,
 Attorney General.

INTOXICATING LIQUORS—ANALYSIS BY STATE
 CHEMIST—CONVEYING IN PERSON.

Tallahassee, Fla., November 3, 1924.

Capt. R. E. Rose,
State Chemist,
Tallahassee, Fla.

Dear Sir:

Replying to your letter of October 31, I beg to say that when samples of liquid supposed to be intoxicating are de-

livered to your office by a Sheriff or other Peace Officer, they should be delivered in person to the Chemist who is to make and who will make the analysis. Samples delivered in this manner are intended to be used as evidence against a defendant and for the evidence of the analysis to be available for such purpose the identity of the sample must be traced in Court from witness to witness who handled the same.

Evidence of the contents of samples delivered by express is only available on behalf of the defendant, and the statute provides that where the defendant wishes to avail himself of an analysis that the liquid may be shipped by express and may be analyzed and returned in a sealed package. In that case the certificate of the Analyzing Chemist may be introduced by the defendant for the purpose of showing that the liquid did not contain a prohibited amount of alcohol. But this course could not be pursued when it is sought to make the analysis the basis for evidence against the defendant.

Yours very truly,
RIVERS BUFORD,
Attorney General.

STATE BOARD OF CHIROPRACTIC EXAMINERS—
ELIGIBILITY.

Tallahassee, Fla., May 12, 1924.

*Dr. E. B. Prichard, Pres.,
Board of Chiropractic Examiners,
Dyal-Upchurch Building,
Jacksonville, Fla.*

Dear Doctor:

Replying to your letter of May 9th asking my construction of Sections 1 and 4 of Chapter 9330, Acts of 1923, I beg to say:

My construction of Section 1 is that a person to be eligible to appointment on the Board of Examiners must have been a bona fide resident of the State of Florida for two years continuously next preceding the time of his appointment and must be a graduate of a school or college as described in the Act.

I do not think it is required that such person shall have practiced his profession in this State for two years.

My construction of Section 4 is that the Board is composed of three Doctors of Chiropractic appointed by the Governor as prescribed in Section 3 of the Act, and that these Examiners each holds his respective office until the expiration of his term or until removal by the Governor for cause. There is no authority vested in the Board to depose any one of its members. Neither would the Governor have a right to depose any member without constitutional grounds for removal from office. By "organization" as used in Section 4 is meant merely the election by the Board of its President, Vice-President and Secretary-Treasurer, which organization is to occur in October of each year and I do not think that a majority board is authorized to force any change in its organization unless a vacancy occurs and the new member is appointed, in which case the Board should be re-organized until the next regular meeting in October.

Yours very truly,

RIVERS BUFORD,

Attorney General.

STATE BOARD ENGINEERING EXAMINERS—
COUNTY ENGINEER—MAY BE CITY ENGINEER.

Tallahassee, Fla., October 11, 1924.

*Mr. C. S. Hammatt, Secy.,
State Board of Engineering Examiners,
215 East Bay St.,
Jacksonville, Fla.*

Dear Sir:

Replying to your letter of October 9th, I beg to say there is no provision of the Constitution or statutes which could be construed to prohibit a person employed as County Engineer from at the same time holding the position of City Engineer. This is a matter which would be controlled entirely by the terms of the contract between the parties.

Yours very truly,
RIVERS BUFORD,
Attorney General.

STATE BOARD OF HEALTH—SCHOOLS—SANI-
TARY CLOSETS.

Tallahassee, Fla., January 18, 1923.

*Mr. George W. Simmons, Jr.,
Chief Sanitary Engineer,
State Board of Health,
Jacksonville, Fla.*

Dear Sir:

Replying to your favor of the 17th instant, your file No. 7138.5, in my opinion, in view of the provisions of paragraph 5, of Section 454, and Section 569 of Revised

General Statutes, the duty of complying with the requirement of Section 473 and 474 of said statutes rests upon the County Boards of Public Instruction.

In case of failure to comply with the provisions of either of said Sections, 473 and 474, the members of the County Board of Public Instruction may be prosecuted under the provisions of Section 5873.

Yours very truly,
RIVERS BUFORD,
Attorney General.

STATE BOARD OF HEALTH—VITAL STATISTICS

Tallahassee, Fla., January 30, 1923.

*Hon. S. G. Thompson, Director,
Bureau of Vital Statistics,
State Board of Health,
Jacksonville, Fla.*

Dear Sir:

I have your favor of the 24th instant in part as follows:

“Please advise your interpretation of Section 5 of the Vital Statistics Law, Chapter 6892 (No. 86). In your opinion has the local registrar any authority to designate the date on which a body shall be interred?”

In my opinion, Section 5 of Chapter 6892, Acts of 1919, now constituting Section 2073 of the Revised General Statutes of Florida, requires that the body of a person dying or found dead in this State shall not be held for interment or other disposition for a longer period than seventy-two hours, unless a permit for extension of such period is granted by permit duly issued by the local registrar of the district where the death occurred or the body was found.

An undertaker or other person holding a body for interment more than seventy-two hours after the death or

the finding of the body, without a permit authorizing such deferred interment, violates the provisions of the statute, and is liable to the punishment prescribed by Section 5550 of the Revised General Statutes, and should be proceeded against as provided by Section 2093 of said statutes.

In short, the dead body of a person must be interred or otherwise disposed of within the specified seventy-two hours, unless the local registrar issues a permit authorizing it to be held for a longer period.

The local registrar has no authority to designate the date of burial *within such limit of seventy-two hours*, but he *may* prescribe a later date on or before which such interment shall be had.

Yours very truly,
RIVERS BUFORD,
Attorney General.

SCHOOLS—MEDICAL INSPECTION—COSTS.

Tallahassee, Fla., August 23, 1923.

*Dr. R. C. Turck,
State Health Officer,
Jacksonville, Fla.*

Dear Dr. Turck:

It is my opinion that a County Board of Education is without authority to appropriate money from the School Fund for the purpose of paying for medical inspection and examination of school children.

Probably a law authorizing such an appropriation would be one of wisdom.

With kindest personal regards, I am,
Yours very truly,
RIVERS BUFORD,
Attorney General.

STATE BOARD OF HEALTH—SECTION 2004—R. G.
S. CONSTRUED AS TO "DUMP."

Tallahassee, Fla., September 23, 1924.

*Hon. Geo. W. Simmons, Jr.,
Chief Sanitary Engineer,
State Board of Health,
Jacksonville, Fla.*

Dear Sir:

Your inquiry under date of the 15th instant was referred to me by the Attorney General upon my return from a short absence.

In my opinion, Section 2004 of Revised General Statutes of Florida vests the State Board of Health with ample power to remedy the situation you mention, so far as it relates to the "dump," and also as to the incinerator if its location is likely to pollute the city's water supply.

Neither the fact that unpleasant odors may be created by the defective incinerator nor that it and the dump are located in a residential section is sufficient of itself to authorize the Board of Health to interfere. Those are matters relief from which must be sought by the individual residents or property owners affected thereby.

The State Board of Health is not authorized to remedy conditions merely because they cause discomfort or depreciate property values; it may properly intervene only when the public health is injured or threatened.

If the incinerator, as constructed or used, is dangerous to the health (not merely affecting the comfort or pleasure of nearby residents) of the public or community, I think the Board could restrain its use by injunction unless or until the objectionable features are removed. And the same remedy would apply to the use of the dump, its further use being enjoined, and then, if necessary, the city be required to cleanse the place or otherwise render the

deposit innocuous, under the provisions of Section 2007 of Revised General Statutes.

The Board, in my opinion, can not properly require the City to remove the incinerator unless it is of itself, and while unused, a nuisance to the public health, but it can prohibit its use if such use is such a menace.

If the Board has at present no general rule or regulation covering the situation, it should, under the provisions of said section 2004, make such separate order and rule as may be requisite in the premises. Then proceed as suggested above, unless the city on notice remedies the situation.

I would be pleased to receive for use of this office, copies of such general rules and regulations as have been adopted and promulgated by the Board of Health.

Yours very truly,

J. B. GAINES,
Asst. Attorney General.

STATE BOARD OF HEALTH—EXPENSES.

Tallahassee, Fla., February 25, 1924.

*Dr. C. T. Young, Pres.,
State Board of Health,
Plant City, Fla.*

Dear Sir:

I have your letter of the 23rd instant.

I hardly see how a charge by an Attache of the State Board of Health for daily automobile hire for an automobile used by such Attache in going to and from his place of residence to and from the headquarters of the State Board of Health can be considered a proper charge against the State of Florida, or the State Board of Health. Such

practice is not indulged in by any other department of the State, or by any other State official. If the duties of an Attache are such as to require the use of an automobile in the performance of such duties, then, of course, it is proper for the department to pay reasonable compensation for such automobile. Different departments have adopted different scales for this compensation. The Hotel Commission allows its Inspectors \$4.00 per day for the use of the automobile belonging to the Inspector. The Inspector pays all operating and upkeep bills and is paid only for fractions of days in which the car is used only for fractions of days,—10 hours being counted as a day.

The Food, Drug and Gasoline Inspectors and Supervisors of Convicts, each, receive 7c per mile for the use of his car from which each must pay his own upkeep and operating expense.

I note you say: "I am advised that as soon as an employee leaves his home on State business that he can properly charge reasonable and necessary items of expense against the State." It is my opinion if you insert the word "Town" after the word "home" you are correct, but I do not know of any employee in the State who is allowed an expense account for traveling in his home Town from his residence to his office.

Yours very truly,

RIVERS BUFORD,

Attorney General.

UNDERTAKER—HOLDING DEAD BODIES.

Tallahassee, Fla., August 7, 1924.

*Mr. S. G. Thompson, Director,
Bureau of Vital Statistics,
State Board of Health,
Jacksonville, Fla.*

Dear Sir:

Replying to your letter of August 6th in which you ask to be directed as to how to answer the following inquiry:

“Please advise us if we may hold the remains of a dead body in our establishment over a period of from three to six months providing same are embalmed and placed in a hermetically sealed casket or container.”

I beg to say I find no statute prohibiting the act contemplated. I would advise, however, that in cases of this kind the undertaker should procure a permit from the Registrar of Vital Statistics authorizing him to hold the body so prepared for the definite length of time desired, and that then when further disposition of the body is to be made he make application and procure a permit for such further disposition.

Yours very truly,
RIVERS BUFORD,
Attorney General.

PHYSICIANS—PERMITS TO PRACTICE.

Tallahassee, Fla., August 9, 1924.

*Dr. Raymond C. Turck,
State Health Officer,
Jacksonville, Fla.*

Dear Sir:

Replying to your letter of August 6th, I beg to say if the physician referred to expects to make physicial examinations and reports thereon to an insurance company, I think he will come within the purview of the statutes regulating the practice of medicine in this State and that it will be necessary for him to procure a permit from the State Board of Medical Examiners before engaging in such service.

Yours very truly,
RIVERS BUFORD,
Attorney General.

STATE BOARD OF HEALTH—VITAL STATISTICS
—CORRECTION.

Tallahassee, Fla., October 6, 1924.

*Dr. Stewart G. Thompson, Director,
Bureau of Vital Statistics,
Care State Board of Health,
Jacksonville, Fla.*

Dear Sir:

Replying to your letter of October 3rd, enclosing letter from Mrs. Isabele Morrison Ludlow in regard to death certificate of Elroy Ludlow, I beg to say that no provision

is made in the statute for the correction of these certificates and, therefore, the only way that appears to be practicable by which the certificate could be authentically reformed would be upon an order being made to that effect by the Circuit Court, and to pursue this course Mrs. Ludlow would be in the position of having to employ private counsel to bring a suit in equity to reform the record.

Unless Mrs. Ludlow wishes to pursue this course, then the only thing for you to do would be to have her send you an affidavit setting up the facts as they actually exist and make the same a part of your records.

Yours very truly,

RIVERS BUFORD,

Attorney General.

MUNICIPALITIES—INDEBTEDNESS.

Tallahassee, Fla., December 15, 1924.

*Mr. Geo. W. Simmons, Jr.,
Chief Sanitary Engineer,
State Board of Health,
Jacksonville, Fla.*

Dear Sir:

Replying to your letter of December 12th, I beg to say the bonding and limitation of indebtedness of cities and towns is controlled by the Charter and ordinances of the individual municipality.

There are very few cities or towns of any importance which are organized under the general law and practically all of such municipalities exist under Special Legislative Acts. Therefore, it will be necessary to refer to the Legislative Act and to the ordinances of each municipality to ascertain what its powers may be. This office is not

authorized to render official opinions concerning the powers and duties of municipalities in this regard.

Yours very truly,

RIVERS BUFORD,

Attorney General.

STATE BOARD OF HEALTH—VITAL STATISTICS
—CORRECTION.

Tallahassee, Fla., December 20, 1924.

*Mr. Stewart G. Thompson,
Director, Vital Statistics,
State Board of Health,
Jacksonville, Fla.*

Dear Sir:

Replying to your letter of December 17th, I beg to say we have no statute in the State of Florida specifically providing for the correction of birth certificates.

The statute does provide that where a child is begotten or is born out of wedlock and the parents of such child marry one another, that such marriage legitimizes the child and, therefore, where a certificate becomes of record showing that a child is born out of wedlock and is, therefore, a bastard, and afterwards affidavits are filed by both parents of the child setting up the fact that such parents have married one another and that they are the parents of such child, then the prior certificate should be corrected or amended so as to show that the child has become legitimate by reason of the intermarriage of the parents. The original record should not be destroyed.

Yours very truly,

RIVERS BUFORD,

Attorney General.

STATE HOTEL COMMISSIONER—RULES AND REGULATIONS—STORAGE AUTOMOBILES.

Tallahassee, Fla., June 23, 1923.

*Hon. Jerry W. Carter,
State Hotel Commissioner,
Tallahassee, Fla.*

Dear Sir:

Replying to your request that I advise you as to whether or not the State Hotel Commissioner is authorized to promulgate rules and regulations, and to enforce the same, particularly as to whether or not the State Hotel Commissioner is authorized to make, promulgate and enforce a rule and regulation, the purpose of which is to eliminate the hazard and risk of life which obtains by reason of certain classes of business being operated in a building which is also used as a Hotel by prohibiting a Hotel or Rooming House to be operated, conducted or maintained within a building or other structure containing any automobile garage, automobile show room, theatre, dry-cleaning establishment, or other business using or storing inflammable volatile material, unless such Hotel or Rooming House shall be separated from such places of business by a prescribed fire wall, I beg leave to advise:

It is a well settled fact that the conduct of a business of either of the classes above described within a building increases the risk or destruction by fire, and it is under the law the duty of the State Hotel Commissioner to make and promulgate such rules and regulations as are necessary to carry out the provisions of the Hotel Inspection Law in accordance with the true intent thereof, and it is the intent of the Hotel Inspection Law to accomplish the protection of the health, life and comfort of the traveling public.

It is, therefore, my opinion that the State Hotel Commissioner is authorized to make, promulgate and enforce rules and regulations along the lines above stated.

I have made some suggestions, by way of pencil memorandum, on the proposed draft of the regulation which you submitted to me, which I herewith return to you for your consideration.

It may be proper for me to advise you at this time that I do not think the statutes are so framed that a criminal prosecution could be maintained against a person, firm or corporation who might violate a rule, promulgated by the State Hotel Commissioner, but it is my opinion that such reasonable rules and regulations may be enforced by mandamus or mandatory injunction.

Yours very truly,
RIVERS BUFORD,
Attorney General.

STATE HOTEL COMMISSIONER—BUILDINGS SUBJECT TO INSPECTION.

Tallahassee, Fla., October 29, 1923.

*Hon. Jerry W. Carter,
State Hotel Commissioner,
Tallahassee, Fla.*

Dear Sir:

Complying with your request that I advise you the proper construction to be placed upon Section 2124, Revised General Statutes, as amended by Section 3 of Chapter 9264, Acts of 1923, in so far as the same applies to boarding houses or rooming houses, I beg to say:

Under paragraph 1 of such Section, as amended, when taken into connection with paragraph 3 of said Section, any building in which there are kept as many as two bed

rooms for the accommodation of transient or permanent guests and in which there is a kitchen and dining room and an office or parlor is subject to inspection and the operator thereof is subject to the payment of the tax for such inspection.

Under the second paragraph of this Section, as amended, any building which is used or held out as a place where sleeping or house-keeping accommodations are furnished for pay, but in which meals are not served and which has as many as five rooms, including an office or parlor, for the accommodation of permanent or transient guests, is subject to inspection and the operator thereof is liable for the tax for such inspection.

A house in which two rooms are let to transient or permanent guests and in which meals are served to such guests, but in which there is no office or parlor for the use or accommodation of such guests, would not come within the purview of the statute because these two rooms, together with dining room and kitchen would constitute only four rooms for the accommodation of guests.

A rooming house where meals are not served having only four rooms for the accommodation of guests and having no parlor or office for their accommodation, would not come within the purview of the statute.

It is my opinion that in computing the number of rooms bath rooms, closets and pantries should not be counted.

Yours very truly,

RIVERS BUFORD,

Attorney General.

HOTEL COMMISSIONER—BUILDING PLANS—
APPROVAL.

Tallahassee, Fla., March 26, 1924.

*Hon. Jerry W. Carter,
State Hotel Commissioner,
Tallahassee, Fla.*

Dear Sir:

I have considered the file of correspondence handed to me yesterday in regard to the erection of an apartment house near Ft. Myers by one Dr. M. C. Williford, and beg to advise that under Section 2124, Revised General Statutes of Florida, as amended by Section 3 of Chapter 9264, Acts of 1923, the law provides: "That before the erection or remodeling of any building for use as a hotel, apartment house, rooming house or restaurant is begun, the registered architect's plans with detailed specifications shall be approved by the supervising architect of the Hotel Commission; and all plans, specifications and drawings submitted for the purpose of securing building permits from any State, county or municipal building inspector or other officer having like jurisdiction, shall bear the signature and seal of the architect and supervising architect of the Hotel Commission before said building permit is issued; and when such plans and specifications are submitted to the supervising architect of the Hotel Commission for approval, they shall be accompanied by a remittance of an amount equal to the inspection fee prescribed for a hotel, apartment house, rooming house or restaurant of such size in Section 2127 and 2128 of the Revised General Statutes."

Section 2121, Revised General Statutes, defines the duties of Prosecuting Officers and makes it the specific duty of County Prosecuting Attorneys, County Solicitors, or State's Attorneys, upon request of the Hotel Commis-

sioner, or Inspector, to prepare all necessary papers and conduct prosecutions for violations of the provisions of the Hotel Inspection Act.

Section 2150, Revised General Statutes, provides that mandamus and injunction may be resorted to to compel compliance with the laws, rules and regulations governing Hotel Inspection and to prohibit any person from constructing, or maintaining, a building coming under the supervision of the Hotel Commission without complying with the laws, rules and regulations of such Commission and prescribing it as a duty of the above named Prosecuting officers to conduct actions of this character upon facts being presented under authority of the Commission.

Section 5641, Revised General Statutes, fixes the penalty for violations of the law, rules and regulations of the Commission.

It therefore appears to me that there should be no necessity for any controversy in regard to the course to be pursued.

If the plans and specifications of the building under construction have not been approved by the architect or supervising architect of the Hotel Commission, then it is being constructed in violation of law and it is the plain duty of either of the Prosecuting Officers, above named, upon report properly made to such officer to institute proceedings to stop the construction until the law has been complied with and if the facts evidence a criminal intent upon the part of the builder, it is the duty of the officer to prosecute the builder.

As I see it this is a matter in which the Prosecuting Officer has no discretion. The Legislature has defined his duties in the premises and I am quite sure that when the complaint is properly laid before such officer, that he will do his full duty. I do not assume that any officer would consider information received over the telephone as an official report, nor do I deem it the duty of an officer to pay any attention whatever to such communications. The

reports should be made to the Prosecuting Officer in detail and in writing, and should be verified under oath.

I herewith return the files to you.

Yours very truly,
RIVERS BUFORD,
Attorney General.

HOTEL COMMISSIONER—BUILDING MATERIAL.

Tallahassee, Fla., April 16, 1924.

*Hon. Jerry W. Carter,
State Hotel Commissioner,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of April 15, asking my construction of a part of Section 7 of Chapter 9264, Acts of 1923, amending Section 2142, Revised General Statutes, which part of said Section reads as follows:

“Provided, further however, that no building of four or more stories in heighth shall be constructed for or converted for use as a hotel, apartment house or rooming house unless it be of non-combustible material or fire-proof construction. This provision shall not apply to buildings now being used for such purposes; and it shall be unlawful for any person, firm or corporation or owner, operator or manager, to advertise or cause to be advertised a hotel, apartment house, rooming house or restaurant as having a higher score or inspection rating than that last given by the Hotel Commissioner or inspector.”

I beg to say:

My construction of the language used in this paragraph is that no building shall be constructed of four or more

stories in height to be used as a hotel, or an apartment house, or a rooming house, unless it be of non-combustible material or fire-proof construction. That no building four or more stories in height, or to be made four or more stories in height shall be converted for use as a hotel, or apartment house, or rooming house, unless it be of non-combustible or fire-proof construction. That to each of these provisions the following exception applies, that is,—“This provision shall not apply to buildings now being used for such purposes.”

This latter provision excludes from the requirements of the statutes in this particular regard all of those buildings which were, at the time of the passage of the Act, being used for hotels, apartment houses, or rooming houses. Therefore, my construction is that this Section of the statute does not prohibit a building of non-combustible material or fire-proof construction, which was at the time of the passage of the Act, being used for either of the purposes, aforesaid, being repaired, remodeled or increased in size without the necessity of using non-combustible material or fire-proof construction.

Of course, there are many other features of the statute looking to the safety, sanitation and convenience of the occupants which would have to be complied with.

Yours very truly,

RIVERS BUFORD,

Attorney General.

HOTEL COMMISSIONER—INSPECTION FEE.

Tallahassee, Fla., December 5, 1924.

*Hon. Jerry W. Carter,
State Hotel Commissioner,
Tallahassee, Fla.*

Dear Sir:

Replying to your request of December 4th, which reads as follows:

"I respectfully request that you give me your official opinion as to whether, under the Revised General Statutes, 1920, and the amendments thereof of 1923, the inspection fee prescribed in Section 2142, in which reference is made to Sections 2127 and 2128, would apply to unfurnished apartment houses."

I beg to say it is my opinion that the only inspection fee that is applicable to a house which is rented in unfurnished apartments is a fee prescribed by Section 2142, Revised General Statutes, as amended by Section 7 of Chapter 9264, Acts of 1923, which is the fee required to be transmitted when specifications are submitted to the Supervising Architect of the Hotel Commission for approval.

Yours very truly,

RIVERS BUFORD,

Attorney General.

HOTEL COMMISSIONER—PROSECUTIONS.

Tallahassee, Fla., December 5, 1924.

*Hon. Jerry W. Carter,
State Hotel Commissioner,
Tallahassee, Fla.*

Dear Sir:

I have your letter of December 4th, as follows:

"I respectfully request that you give me your official opinion as to whether or not it would be legal for a hotel inspector to make complaint against and cause the arrest and prosecution of a person who has, within the past two years, operated a hotel, apartment house, rooming house or restaurant in violation of Sections 2126, 2127, 2128, 2129, 5641 and 5642 of the Revised General Statutes, and Section 2124, 2125 and 2142 of the Revised General Statutes as amended in 1923, which make it a misdemeanor and impose a maximum penalty of \$50.00 fine, or thirty days in jail, or both, for not having first filed with the Hotel Commission the address and description of his place of business, and not having made application for, or paid his inspection license to the Hotel Commission, as required, on or before October 1st, or before beginning operation."

In reply I beg to say that a failure upon the part of the owner or operator of a hotel, apartment house, rooming house or restaurant to comply with the Sections referred to in your letter constitutes a misdemeanor for which prosecution is not barred by the statute of limitation until the expiration of 2 years from the date of the offense. The statutes make it the duty of the Hotel Commissioner and Hotel Inspectors to enforce the provisions of the statutes in this regard and, therefore, it is the duty of such officials to make complaint of such violations to the proper County authorities for prosecution.

Yours very truly,

RIVERS BUFORD,

Attorney General.

STATE GEOLOGIST—APPROPRIATION.

Tallahassee, Fla., June 7, 1924.

*Hon. Herman Gunter,
State Geologist,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of June 6th, I beg to say:

It is my opinion the language following the item of appropriation for the office of State Geologist, reading as follows:

“Provided, that any unexpended balance in any of the foregoing items for State Geologist if not required for the purpose for which specifically appropriated may be applied to defray other necessary and regular operating expenses of the State Geologist Department if approved by the Governor,”

means that in the event the total appropriation made for any specific purpose should not be required for that purpose, but should be needed for any other purpose for which an appropriation is made by the Act, then with the approval of the Governor such unexpended balance of the fund not needed for the purpose for which it is appropriated may be used for that purpose for which it appears to be needed.

I do not think, however, that this would authorize you to pay a higher salary to any person employed in the Department than that which is contemplated by the Appropriation Act. If, however, for instance the entire amount appropriated for salaries is not required for such salaries and it should appear there will be a deficiency in the appropriation for printing stationery and engraving, or for postage, or for Incidental Expense, then so much of this

surplus in the Salary Appropriation could, with the approval of the Governor, be used to meet that deficiency.

Yours very truly,

RIVERS BUFORD,

Attorney General.

STATE LIVESTOCK SANITARY BOARD—QUARANTINES—VIOLATIONS AND PUNISHMENT.

Tallahassee, Fla., November 8, 1923.

*Dr. J. V. Knapp,
State Veterinarian,
Tallahassee, Fla.*

Dear Doctor Knapp:

I have your favor of the 3rd inst., with the affidavits attached thereto, and have considered the inquiry propounded.

The State Live Stock Sanitary Board is governed, as to its powers and duties by the provisions of Chapter 9201, Laws of Florida, Acts of 1923, and such pre-existing provisions of law as are not inconsistent therewith.

This Act operated to repeal many of the provisions of the former statute upon the same subject, but left in force other provisions thereof, and the Act of 1923 is to be construed in connection with these unrepealed provisions of the former statute.

"Section 6 of Chapter 9201, Acts of 1923, empowers the Live Stock Sanitary Board "to make, promulgate, and enforce rules and regulations for carrying out the provisions and requirements" of said Act, and "to establish, maintain, and enforce quarantines in any of the zones, or counties or parts of counties," etc., and to "prescribe quarantine districts," etc., and to "restrict, regulate or prohibit the movement or transportation of cattle, etc. into

or out of such designated areas when deemed necessary by said Board," etc.

This Act, however, does not specify how any quarantine established by the Board or any rule or regulation made and promulgated by it may be enforced; but in Section 19 thereof it is provided that "this Act shall not be construed to repeal any law in force for the protection of domestic animals unless in direct conflict herewith."

Hence, so far as they are not in conflict with said Chapter 9201, the provisions of Sections 2101 to 2119, both inclusive, and Sections 5552, 5553 and 5554, of Revised General Statutes of Florida, as amended by Chapter 8508, Laws of Florida, Acts of 1921, are continued in force. The three Sections last named, as so amended, and Section 2118, Revised General Statutes, prescribe the means for enforcing the rules and regulations of the Board and punishment for violation thereof.

The facts stated by you show a violation of quarantine regulations by both the L. & N. R. R. Co., and the A. N. R. R. Co., each of which is liable to the penalty prescribed by Section 5553, Revised General Statutes, as amended by Section 5 of Chapter 8508, Acts of 1921. No other penalty is prescribed for such violation of quarantine, no right of action for civil damages in such cases being granted to the public or to public authorities. Hence such a suit as you suggest cannot be maintained.

I return the affidavits handed me as they may prove of service by way of refreshing the memory of witnesses in the event prosecution of the offending railroad companies is had.

Yours very truly,
RIVERS BUFORD,
Attorney General.

STATE LIVE STOCK SANITARY BOARD—CATTLE
DIPPING—FAILURE AND PUNISHMENT.

Tallahassee, Fla., November 8, 1923.

*Mr. C. R. Shaw,
Member State Live Stock
Sanitary Board,
Quincy, Fla.*

Dear Sir:

I have your request that I advise you what course may be pursued by the State Live Stock Sanitary Board in a case where a person residing in an area which is under quarantine and in which systematic tick eradication work is being carried on by the State Live Stock Sanitary Board, under the provisions of Chapter 9201, Acts of 1923, and owning a cow or cattle which are not excepted from the provisions of the statute by Section 14 of said Chapter.

It is my opinion that a person who fails to comply with the rules and regulations duly promulgated by the State Live Stock Sanitary Board and who fails and refuses to dip cattle, as is required by said Chapter 9201, and who obstructs the State Live Stock Sanitary Board in the performance of its legal duty may be prosecuted under Section 5554, Revised General Statutes of Florida, as amended by Section 6 of Chapter 8508, Acts of 1921, or may be proceeded against in the manner provided by the provisions of Section 12 of Chapter 9201. If he uses or offers to use physical violence and thereby obstructs the officers in the discharge of their official duties, he may be prosecuted under Sections 5385 or 5386, Revised General Statutes of Florida. Also injunction will lie to prohibit such person from further obstructing the State Live Stock Sanitary Board, its agents or servants, in carrying out and enforcing the provisions of the law. Where the facts warrant it all four courses may be pursued.

Section 6 of Chapter 9201, Acts of 1923, empowers the Live Stock Sanitary Board "to make, promulgate, and enforce rules and regulations for carrying out the provisions and requirements" of said Act, and "to establish, maintain, and enforce quarantines in any of the zones, or counties or parts of counties," etc., and to "prescribe quarantine districts," etc., and to "restrict, regulate or prohibit the movement or transportation of cattle, into or out of such designated areas when deemed necessary by said Board," etc.

This Act, however, does not specify how any quarantine established by the Board or any rule or regulation made and promulgated by it may be enforced; but in Section 19 thereof it is provided that "this Act shall not be construed to repeal any law in force for the protection of domestic animals unless in direct conflict herewith."

Hence, so far as they are not in conflict with said Chapter 9201, the provisions of Sections 2101 to 2119, both inclusive, and Sections 5552, 5553 and 5554, of the Revised General Statutes of Florida, as amended by Chapter 8508, Laws of Florida, Acts of 1921, are continued in force. The three Sections last named, as so amended, and Section 2118, Revised General Statutes, prescribe the means for enforcing the rules and regulations of the Board and punishment for violation thereof.

Yours very truly,

RIVERS BUFORD,

Attorney General.

STATE LIVE STOCK SANITARY BOARD—CATTLE
DIPPING—EXPENSES.

Tallaassee, Fla., December 20, 1923.

*Dr. J. V. Knapp,
State Veterinarian,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of December 19th, I will answer your questions in the order in which they are propounded.

1. (a) It is my opinion that Chapter 9201, Acts of 1923, contemplates that the Board shall pay the amount due owners for dipping cattle at the time such expense is incurred and that such Act does not contemplate that such payments be deferred until tick eradication shall have been completed in the territory. (b) It is my opinion that the Act contemplates that the Board shall pay its pro-rata part for the dipping of such cattle as may be dipped whether the owner dips all of his cattle or not. (c) It is my opinion that the Act contemplates that the Board shall pay for dipping when dipping is done, and if an owner becomes irregular in dipping the Board may enforce regularity under the provisions of the Act.

2. It is my opinion that the Board may commence work in either Zone 2, Zone 13 or in Gadsden County, or in that part of Duval County referred to in the same paragraph with this area, and in such other adjacent territory as may be under the provisions of the Act attached to such territory. It will, of course, be better if the Board can take up the work in this area commencing all at the same time, but if it is impossible to do this on account of lack of funds, then the Board may use its discretion and begin the work where it is most needed.

3. My answer to question No. 2, answers this question.

4. I think my answer to question No. 2 also answers this.

If I can be of further service to you, please advise me.

Yours very truly,

RIVERS BUFORD,

Attorney General.

STATE LIVE STOCK SANITARY BOARD—FENCES.

Tallahassee, Fla., January 7, 1924.

*Dr. J. V. Knapp,
State Veterinarian,
Tallahassee, Fla.*

Dear Sir:

I have your letter of the 7th instant requesting that I give you my official opinion on the following points:

“Section 11, Line 2, Chapter 9201—How broadly may the word ‘fences’ be construed?

“In Section 13, same Chapter—Would this Section be construed to mean that the Board shall procure pasture land and fence it, or does it mean that where people own their own land and pastures that we might dip on a portion of such land or pastures and starve out the tick on the other portion?”

It is my opinion that the word “fences” referred to above means a substantial fence so constructed as to securely restrain ordinary cattle of all sizes.

It is my opinion that Section 13 above referred to means that the Board may employ the pasture rotation method of tick eradication where conditions are such that this method may be practically employed, that is where pastures are already separated by natural boundaries or by fences so constructed as to prevent infection from one to the other. I do not think the Act contemplates that the

Board shall procure pasture land and fence it although the Board would, under the provisions of this Section, probably be justified in erecting fences where by so doing tick eradication would be more quickly or more economically accomplished.

Yours very truly,
RIVERS BUFORD,
 Attorney General.

**STATE LIVE STOCK SANITARY BOARD—CATTLE
 DIPPING—WIDOWS EXEMPTION FROM
 EXPENSES.**

Tallahassee, Fla., January 22, 1924.

*Dr. J. V. Knapp,
 State Veterinarian,
 Tallahassee, Fla.*

Dear Sir:

Replying to your letter of the 21st instant with reference to cattle belonging to a widow living in Liberty County, I beg to say it is my opinion that, under the conditions named in your letter, the widow is entitled to the benefit of the provisions of Section 14 of Chapter 9201, Acts of 1923, regardless of where her domicile may be if it appears that she is entitled to an exemption provided by Section 9 of Article IX of the Constitution of the State of Florida. This would have to be determined from the facts in each case and, if the widow is found to be entitled to the benefits of Section 14 of said Chapter 9201, then her cattle to a number not exceeding 25 head would be exempt from the provisions of Section 12 of Chapter 9201, Acts of 1923.

Whether or not the cattle are listed on the tax books would not make any difference.

Yours very truly,
RIVERS BUFORD,
 Attorney General.

STATE LIVE STOCK SANITARY BOARD—NOTICE
OF QUARANTINE—FORM.

Tallahassee, Fla., February 21, 1924.

*Dr. J. V. Knapp,
State Veterinarian,
Tallahassee, Fla.*

Dear Sir:

I have your letter of the 19th instant attaching copy of Notice of Local Quarantine of Cattle.

I think a Notice in the form which you submit is sufficient under the provisions of Section 2117, Revised General Statutes of Florida, which was originally Section 17 of Chapter 7345, Acts of 1917. This Notice, however, would have no lawful force and effect except when issued by the State Live Stock Sanitary Board when based upon facts sufficient to support the allegations thereof brought to the attention of the said Board in some proper and definite manner. The Board cannot delegate to its employees authority to determine the questions involved.

The principles involved in this matter have been fully determined and clearly enunciated by our Supreme Court in the case of State ex rel., Wolyn vs. A. N. Ry. Co., et al., reported in 87 Sou., page 909 and a like case reported in 88 Sou., page 310. I think you will find a careful study of these two opinions of much interest to you and the State Live Stock Sanitary Board, especially, because of the fact that the "Quarantine Provisions" contained in Chapter 7345 bear a close resemblance to the provisions contained in Chapter 6835, Acts of 1915, vesting certain authority in the State Plant Board, which Act was in these opinoins construed by the Supreme Court.

Yours very truly,

RIVERS BUFORD,

Attorney General.

STATE LIVE STOCK SANITARY BOARD—CATTLE
DIPPING IN LEON COUNTY.

Tallahassee, Fla., April 26, 1924.

*Dr. J. V. Knapp,
State Veterinarian,
Tallahassee, Fla.*

Dear Sir:

Replying to your inquiry of April 25, I beg to advise that in my opinion the State Live Stock Sanitary Board is not authorized to commence systematic tick eradication work in Leon County under the provisions of Section 8 of Chapter 9201, Acts of 1923, until Zone No. 12 shall be freed of cattle fever tick, which in this case will require Zone No. 12 to be so freed. However, systematic tick eradication work being carried on in Gadsden County, under the provisions of Section 9, said Board is authorized to establish and carry on tick eradication work in Leon County upon petition of cattle owners as provided in the latter part of said Section 9.

Yours very truly,
RIVERS BUFORD,
Attorney General.

STATE LIVE STOCK SANITARY BOARD—
REWARDS.

Tallahassee, Fla., August 1, 1924.

*Dr. J. V. Knapp,
State Veterinarian,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of July 29th, I beg to say it is my opinion that the State Live Stock Sanitary Board is

without authority to offer or pay rewards for the apprehension and conviction of persons committing criminal offenses in connection with the work of tick eradication.

Yours very truly,
RIVERS BUFORD,
Attorney General.

STATE LIVE STOCK SANITARY BOARD—VAT
CONSTRUCTION OR PURCHASE.

Tallahassee, Fla., August 22, 1924.

*Dr. J. V. Knapp,
State Veterinarian,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of the 18th instant, asking my opinion as to whether or not it would be proper for the State Live Stock Sanitary Board to pay for certain vats already constructed in Washington County, I beg to say:

Under the provisions of Sections 10 and 11, Chapter 9201, Acts of 1923, vats are required to be constructed at the expense of the Board, and, therefore, if an amicable agreement can be reached between your Board and the Board of County Commissioners by which the Board of County Commissioners will furnish vats to the State Live Stock Sanitary Board at a reasonable price, then your Board would be authorized to enter into such agreement and pay such reasonable price to acquire such vats.

I herewith return files in connection with this matter as per your request.

Yours very truly,
RIVERS BUFORD,
Attorney General.

STATE LIVE STOCK SANITARY BOARD—EXPEN-
DITURES.

Tallahassee, Fla., August 22, 1924.

*Dr. J. V. Knapp,
State Veterinarian,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of the 18th instant, with reference to the payment of fee of \$25.00 for membership dues in the U. S. Live Stock Sanitary Association, I beg to say that it is my opinion this is a legitimate expenditure, and it may be made under the provisions of Section 4, Chapter 9201, Acts of 1923.

I return file as requested.

Yours very truly,
RIVERS BUFORD,
Attorney General.

STATE LIVE STOCK SANITARY BOARD—RE-
PLEVIN OF CATTLE SEIZED.

Tallahassee, Fla., September 11, 1924.

*Dr. J. V. Knapp,
State Veterinarian,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of September 9th asking on behalf of the State Live Stock Sanitary Board my opinion as to whether or not an action will lie in cases where cattle are seized under the provisions of Chapter 9201, Acts of 1923, for failure of the owners or persons in control

or possession of such cattle to comply with such law, I beg to say:

It is my opinion that the legality of the seizure of cattle under the provisions of the Section referred to may be tested by an action in replevin. Whether the action can or can not be sustained will depend entirely upon whether or not the facts warrant the seizure of the cattle by the State Live Stock Sanitary Board and, if upon the trial of the replevin action it should appear that the cattle were illegally seized by the State Live Stock Sanitary Board, then the judgment should be against the plaintiff in replevin for costs and the property.

The statute in regard to this matter is not identical with other statutes authorizing the seizure of property, such for instance as the seizure of unlawful fishing nets. Under the statute in regard to dipping of cattle, a certification of property is not contemplated but all that is contemplated is to provide that the property itself, to-wit: The cattle, shall be responsible for the cost of the dipping and other enforcement of law.

Yours very truly,
RIVERS BUFORD,
Attorney General.

STATE BOARD OF OPTOMETRY EXAMINERS—
ELIGIBILITY.

Tallahassee, Fla., November 3, 1924.

Dr. W. F. Davey,
Secretary & Treasurer,
State Board of Optometry Examiners,
Daytona, Fla.

Dear Sir:

Under the facts stated in your letter of October 29th, I

beg to say I do not think the actions of the Board of Examiners of Optometry would be invalidated by reason of a person who has retired from the practice remaining a member of the Board, but it occurs to me that the advisable procedure in such cases would be for such member to resign and thereby allow the Governor to appoint a new member who is engaged in the practice.

Yours very truly,

RIVERS BUFORD,

Attorney General.

UNOFFICIAL OPINIONS

Not required under the Statutes of Florida.

The following are only a few of these communications such as may be of general interest to County Officers and the public:

SHERIFF—MILEAGE FEES.

Tallahassee, Fla., March 3, 1923.

*Hon. L. L. Pararo,
Clerk Circuit Court,
Crawfordville, Fla.*

Dear Sir:

Replying to your request that I advise you whether or not County Commissioners are authorized to pay the Sheriff certain mileage, I beg to say:

It is my opinion that the Board of County Commissioners is only authorized to pay the Sheriff for the mileage actually traveled in the performance of any duty for which mileage is chargeable. If a Sheriff has placed in his hands warrants authorizing the arrest of, we will say, six men and all of those men are together at some distant place, he has them arrested and then goes to that place and brings them back, he is entitled to mileage one way and return for himself; having made but one trip he is only entitled to receive pay for one trip and to charge for more than one trip would be to charge for constructive service. In addition to this he would be entitled to receive mileage for the conveyance of each prisoner and if a guard should be necessary, he is entitled to receive \$2.00 per day and the actual traveling expenses of the guard.

If a Sheriff should deem it expedient to undertake the arrest of only a portion of the men himself and to have a Deputy undertake the arrest of the remainder and in fact, should only arrest a part of the men himself and convey them back to the place authorized in the warrant, and should have his Deputy to make the arrest of the others and convey them back to the place authorized in the warrant, he would then be entitled to pay for one mileage each way for himself and to mileage one way for the conveyance of each prisoner conveyed by him and would be entitled to one mileage each way for his Deputy and mileage one way for each of the prisoners so conveyed by the Deputy.

I think this fully advises you upon the point at issue.

Yours very truly,

RIVERS BUFORD, -

Attorney General.

TAX COLLECTOR—COMMISSIONS—SPECIAL
SCHOOL DISTRICTS.

Tallahassee, Fla., March 12, 1923.

*Hon. C. C. Mathis,
County Superintendent,
Panama City, Fla.*

Dear Sir:

Replying to your letter of March 12th, I beg to say that Section 801, Revised General Statutes of Florida, provides that the commission on taxes collected for Special Tax School Districts shall be audited and allowed by the Board of Public Instruction at the rate of $1\frac{1}{2}\%$ on the collections, and it is my opinion that this authorizes the commission to be paid to the Tax Collector.

The salary of the County Superintendent of Public Instruction cannot be paid from the County School Fund nor

from school taxes. See *State vs. County Commissioners Gadsden County*, 17 Fla. 418.

Yours very truly,
RIVERS BUFORD,
Attorney General.

TAX COLLECTOR—OFFICE TO BE OPEN.

Tallahassee, Fla., April 12, 1923.

Hon. J. R. Roberts,
Cross City, Fla.

Dear Sir:

Replying to your letter of the 11th instant, I beg to say it is my opinion that the Tax Collector should be at his office, or have some person in authority there during all week days both before and after the books have been closed. No person is prevented from paying his tax by reason of the fact that the books are closed. Of course, after the books are closed cost may accrue, which should be added to the tax and in other cases it may not have accrued.

It is also frequently the case that people wish to inquire as to the status of the tax and to see how the assessment has been made, all of which things they are entitled to learn at the office of the Tax Collector.

Yours very truly,
RIVERS BUFORD,
Attorney General.

SUPERVISOR OF REGISTRATION—TRANSCRIB-
ING BOOKS.

Tallahassee, Fla., April 12, 1923.

*Hon. C. A. Wilcox,
Supervisor of Registration,
Clearwater, Fla.*

Dear Sir:

I find no authority whatever for a Supervisor of Registration to transcribe names from one Registration Book to another.

The County Commissioners are authorized to revise the Registration Books prior to a General or Special Election. See Section 244, Revised General Statutes of Florida.

It appears to me under the several provisions of the statute that a person registering before the Tax Collector is entitled to have his name placed upon the Primary Registration roll as is provided in such cases, and that then when the County Commissioners meet to revise the registration list for a General or Special Election they may include upon such lists all persons who are duly qualified and registered at the time such revision is made, and those persons whose names have been placed on the Primary Registration Book by reason of having registered before the Tax Collector are entitled to have their names included on the list prepared by the County Commissioners to be used at the election.

Yours very truly,
RIVERS BUFORD,
Attorney General.

BONDS—COUNTY—TO STATE ROAD DEPARTMENT.

Tallahassee, Fla., May 10, 1923.

*Hon. John E. Mathews,
County Attorney,
Jacksonville, Fla.*

Dear Sir:

Replying to your letter of the 9th instant, I beg to advise that it is my opinion that County Commissioners can lawfully turn over County bonds, or the proceeds of County bonds, to the State Road Department, the proceeds of such bonds to be expended in the construction of public highways in the County. That the State Road Department spends the money and constructs the road makes the road building no less a County purpose than if the same were constructed under the supervision and control of the Board of County Commissioners. Chapter 8553, Acts of 1921, provides the procedure under which such agreements may be made and carried out. I cannot see that a resolution expressing the will of the Board of County Commissioners to procure and accept 10% of the amount of the bond issue from the State Road Department to be applied to the roads to be constructed with the proceeds of the bond issue would have any effect upon the validity of the bond issue.

Yours very truly,
RIVERS BUFORD,
Attorney General.

COUNTY ATTORNEY—COUNTY COMMISSIONER
NOT TO BE.

Tallahassee, Fla., May 15, 1923.

*Hon. T. P. Chaires,
County Commissioner,
Old Town, Fla.*

Dear Sir:

Replying to your letter of the 14th instant, I beg to advise that a Board of County Commissioners cannot properly employ a member of that Board as Prosecuting Attorney for the County or as Attorney for the Board of County Commissioners.

Members of the Board of County Commissioners cannot act officially on the approval of bonds or like matters except in meetings of the Board. Such meetings may be either regular or special meetings.

A married woman is not qualified to sign a bond as surety unless she, by order of Court, has been made a free-dealer and even then in that case I do not think that officials charged with the duty of approving bonds should approve any official bond upon which the wife of the bonded official appears as one of the two sureties.

I know of no reason why the County Commissioners cannot either use the Road and Bridge Fund in the County to build a bridge or advance a part of the fund for such purpose unless it appears that the Road and Bridge Fund on hand in the County was raised by taxation for a specific purpose. If it appears that it has been raised for a specific purpose it cannot properly be converted to another purpose.

Yours very truly,
RIVERS BUFORD,
Attorney General.

FINES—COMMUTING.

Tallahassee, Fla., May 22, 1923.

*Hon. Frank Richards,
Sheriff Glades County,
Moore Haven, Fla.*

Dear Sir:

Under the law of this State no Judge has the right to reduce a fine or sentence after the same has become effective by judgment of the Court. The only officials having authority to commute fines or sentences are those constituting the State Board of Pardons.

Under the facts stated in your letter mandamus would lie against you to compel you to collect the full amount of the fine and cost.

Yours very truly,
RIVERS BUFORD,
Attorney General.

SCHOOLS—TRANSPORTATION—RESPONSIBILITY.

Tallahassee, Fla., May 19, 1923.

*Hon. R. S. Blanton,
Superintendent of
Public Instruction,
Clearwater, Fla.*

Dear Sir:

I have your letter of May 17th.

I assume that it is the intention of your Board to transport pupils to and from school without charge, merely exercising a public function of providing means for pupils

to reach the public schools and to return home from the same daily. Under these conditions it is my opinion that the Board could not be held liable for personal injury occurring by mere accident.

Yours very truly,
RIVERS BUFORD,
Attorney General.

COUNTY COMMISSIONERS—POOR AND INDIGENT.

Tallahassee, Fla., May 24, 1923.

*Hon. J. H. Colson,
Senate Chamber,
Tallahassee, Fla.*

Dear Doctor:

Replying to your request that I advise you whether or not in my opinion a Board of County Commissioners is limited to any particular amount in furnishing relief in paragraph 4 of Section 1475, Revised General Statutes of Florida, beg to say:

It is my opinion that under the paragraph and Section above referred to the County Commissioners may furnish such relief as may be necessary and that each case would have to stand upon its own facts. I do not think that under the provisions of this Section a Board of County Commissioners could donate any considerable sum of money to any particular individual to satisfy in full all claims that such individual might have against the County, but the donations would have to be made from time to time in such a manner as might be necessary to cover the then present needs of the indigent person, and might be made in a sufficient sum to pay hospital and doctor's bills and in such additional sums monthly as are necessary to

support the indigent person if such person is without other means of support and physically unable to earn a livelihood.

Yours very truly,
RIVERS BUFORD,
Attorney General.

SHERIFF—PER DIEM FOR COURT ATTENDANCE.

Tallahassee, Fla., June 14, 1923.

*Hon. E. E. Boyce,
Sheriff St. Johns County,
St. Augustine, Fla.*

Dear Sir:

Replying to your letter of the 12th instant, I beg to say:

It is my opinion that under no condition is the Sheriff's office entitled to more than one per diem for Court attendance in any one day. The Sheriff may attend the Court in person or may have one of his deputies, or he may be in attendance a part of the time and have a deputy in attendance a part of the time. The fee however goes to the Sheriff because a deputy in all matters acts in the name of the Sheriff.

Yours very truly,
RIVERS BUFORD,
Attorney General.

JURORS—PAY IN COUNTY JUDGE'S COURT.

Tallahassee, Fla., June 22, 1923.

*Hon. George W. Jackson,
County Judge,
St. Augustine, Fla.*

Dear Judge:

I have your letter of the 19th instant.

I think that the pay that a juror is entitled to receive in a County Judge's Court depends largely upon the procedure adopted by the Court.

If you have regular trial terms and your jury is subpoenaed for the term, I think that a juror is entitled to his per diem and mileage for attendance whether he serves or not. If, however, you have a jury called to appear instantaneously to try a particular case I do not think the juror is entitled to pay unless he serves. This is the rule which prevailed in the County Judge's Court in which I had had experience.

Yours very truly,
RIVERS BUFORD,
Attorney General.

SHERIFF—FEES EXECUTING SEARCH WARRANTS.

Tallahassee Fla. June 23, 1923.

*Hon. Angus Morrison,
Crawfordville, Fla.*

Dear Sir:

Replying to your letter of the 22nd instant.

The law provides that where a search warrant is sworn

out by a Sheriff, Deputy Sheriff, or other police officer, to authorize a search for intoxicating liquors, and no such liquors are found, that then the Sheriff shall not be allowed any fees for making the search.

The purpose of this Act was to prevent officers from swearing out search warrants for the purpose of making costs.

Yours very truly,
RIVERS BUFORD,
Attorney*General.

LAWS—EFFECTIVE DATE.

Tallahassee, Fla., June 24, 1923.

Hon. W. R. Hardee,
Fort Pierce, Fla.

Dear Sir:

Replying to your letter of the 23d:

When the Legislature provides that an Act shall take effect upon approval by the Governor, or becoming a law without his approval, then it is specially provided when such Act shall take effect, and when either contingency occurs the Act becomes effective.

All acts become laws when not vetoed by the Governor within the time prescribed by the Constitution, and unless otherwise provided all laws become effective 60 days after the adjournment of the Legislature, but the Legislature may specifically provide that an Act shall become effective either upon approval by the Governor or upon becoming a law without his approval, or upon some specific date, and when it so provides upon the occurrence of such contingency the Act becomes effective.

For further light on this subject, see Parker, et al., v. The Evening News Publishing Company, 54 Florida, 482.

Yours very truly,

RIVERS BUFORD,

Attorney General.

COUNTY COMMISSIONERS—APPROVAL OF BILLS.

Tallahassee, Fla., June 25, 1923.

*Hon. C. C. Small,
Miami, Fla.*

Dear Major:

I have your letter of the 23d instant.

It is my opinion that the bills presented to the Grand Jury as referred to in your letter are not such bills as the County Commissioners are authorized to pay.

In the first place, I consider it contrary to law for a Court Reporter or Stenographer to be in the Grand Jury Room, except as a witness, while testimony is being taken before a Grand Jury. When such course is pursued, the secrecy of the Grand Jury proceedings is violated, and I do not think the Court or any other official is authorized to allow any person to be in the Grand Jury Room during the taking of testimony except the Grand Jury, the witness and the Prosecuting Attorney.

There is no authority authorizing the Board of County Commissioners to employ detectives. There is authority authorizing the employment of a County Detective in some counties, and I believe that this applies to Dade County, and if this detective was employed in the manner prescribed for the employment of a detective to assist the County Solicitor in that County, then his salary should be paid as is provided in such cases, but I gather from

your letter that this was the employment of a special detective for special purposes.

Yours very truly,
RIVERS BUFORD,
Attorney General.

WITNESSES—CONTEMPT.

Tallahassee, Fla., July 11, 1923.

*Hon. Guy M. Strayhorn,
County Prosecuting Attorney,
Ft. Myers, Fla.*

Dear Sir:

Replying to your letter of July 9th, I beg to say:

Subpoenas issued for witnesses to appear before the County Prosecuting Attorney should be issued by the Clerk of the County Court in the name of the Judge thereof, and in my opinion any person who without lawful cause fails to obey such subpoena is amenable to punishment for Contempt of Court.

It is my opinion that a witness who refuses to answer questions propounded by the Prosecuting Attorney should be reported by the Prosecuting Attorney to the Judge of the Court and, thereupon the Judge of the Court should order the witness brought before him and require the witness to submit to examination in the presence of the Court and if a proper question is propounded to the witness, the Court should then advise the witness that he should answer the question, and if he refuses to do so I think the Court may properly punish such witness for Contempt.

I rather think that before a witness could be prosecuted for perjury on account of statements made to the Prosecuting Attorney that he would have to be sworn as such

witness either by the Judge of the Court or the Clerk of the Court, and that such testimony must be shown to be touching a material fact.

Yours very truly,
RIVERS BUFORD,
Attorney General.

JURORS—WOMEN NOT ELIGIBLE.

Tallahassee, Fla., July 18, 1923.

*Mr. B. L. Blackburn,
Supervisor of Registration,
Tampa, Fla.*

Dear Sir:

I have your letter of the 16th.

There is no law in this State which authorizes the women to serve as jurors.

The Constitutional Amendment providing that the right of no person to vote shall be denied or abridged by reason of sex has nothing whatever to do with statutory qualifications for jury services.

A bill was introduced at the recent session of the Florida Legislature, the purpose of which was to amend the statute so as to include woman among those qualified to serve as jurors, but the bill did not pass.

Yours very truly,
RIVERS BUFORD,
Attorney General.

LABOR—FRAUDULENT CONTRACT FOR
ADVANCES.

Tallahassee, Fla., July 19, 1923.

*Hon. J. B. Kline,
Justice of the Peace,
Clermont, Fla.*

Dear Sir:

Replying to your letter of the 17th, I beg to say that the Supreme Court has not held Chapter 7917, Acts of 1919, unconstitutional.

In my opinion the Act in question is valid, but there are very few cases in which it can be invoked. It is absolutely necessary, to have a lawful conviction under this Act, that it be proven that the person charged intended to defraud the person from whom he procured advances, and, of course, this proof can not be made if as a matter of fact the person procuring the advances carried out a part of his contract by doing some labor after receiving the advances.

I think that if this statute is used to keep labor at any particular place, or for the purpose of forcing laborers to remain and work for any particular individual, that the employer and also the officers who use it to carry out that purpose might be convicted of peonage.

Yours very truly,

RIVERS BUFORD,

Attorney General.

FINES—PROHIBITION VIOLATION.

Tallahassee, Fla., July 24, 1923.

*Hon. T. L. Belser,
County Judge,
Bonifay, Fla.*

Dear Judge:

I can readily understand that you are somewhat confused as to the penalty that can be imposed for the offense of drunkenness.

Section 5472, Revised General Statutes of Florida, which was originally Section 8 of Chapter 7736, Acts of the Extra Session 1918, provided "That it shall be unlawful for any person to become or be drunk or intoxicated." This Section has not been amended.

Section 5486, Revised General Statutes of Florida, which was originally Section 18 of Chapter 7736, provided for the punishment for the violation of "any of the foregoing provisions of this article herein declared to be unlawful or to be a misdemeanor," etc. Under this Section the penalty was provided for the violation of Section 5472.

The Legislature of 1923, however, attempted to amend Section 5486, and if the attempted amendment is valid then there is no provision for punishment for the violation of Section 5472. I seriously doubt, however, that Chapter 9266, Acts of 1923, is valid because the title of the Act is in conflict with Section 16, Article 3, of the Constitution. See *Webster v. Powell*, 36 Fla. 703.

I hand you herewith a copy of the prohibition laws which were enacted at the recent session of the Legislature.

Yours very truly,

RIVERS BUFORD,

Attorney General.

TAXATION—POLLS—TIME OF PAYMENT.

Tallahassee, Fla., July 30, 1923.

*Mr. W. E. Sinclair,
Safety Harbor, Fla.*

Dear Sir:

Replying to your letter of July 27th, I beg to say that in my opinion any citizen of the State has a right to pay his poll tax and demand a receipt for it at any time.

Yours very truly,

RIVERS BUFORD,
Attorney General.

CORPORATIONS—DECLARATION OF TRUST.

Tallahassee, Fla., July 30, 1923.

*Messrs. Kay, Adams & Ragland,
Consolidated Building,
Jacksonville, Fla.*

Gentlemen:

Replying to your letter of July 28th, I beg to say that in my opinion Chapter 9125 applies to all associations of persons doing business in the State of Florida under what is commonly known as a "Declaration of Trust" whether such associations were doing business in the State prior to the passage of this Act or shall become organized thereafter. I think the purpose of the Act was to provide a method by which such organization would acquire a legal status other than that of a co-partnership and to charge the public with notice of the trust agreement and limit the liability of unit holders to the extent set forth in such

agreement, and to preclude their being held liable as co-partners.

Whether or not the Act is entirely sufficient to effect this purpose I am not prepared to say, but I am sure that such was the intent and if it does not at present attain this, it will later be so amended to more definitely do so.

Yours very truly,
RIVERS BUFORD,
Attorney General.

JURORS—NEGROES.

Tallahassee, Fla., August 1, 1923.

*Hon. B. L. Blackburn,
Supervisor of Registration,
Tampa, Fla.*

Dear Sir:

I observe that a newspaper report published in the Jacksonville Journal of Monday, the 30th ultimo, reads that you are quoted as saying that I advised you while you were in Tallahassee during the session of the Legislature as to the propriety of placing the names of negroes on the list of veniremen.

I am sure that the reporter has misquoted you because as a matter of fact I never had a conversation with you in Tallahassee or anywhere else touching this subject, and if I had had a conversation with you on that subject I would never have advised you that it was your duty to place the names of negroes on the list of veniremen.

Of course, it is not unlawful for the names of negroes to be placed on such lists, but in my opinion the ends of justice and the welfare of the community will be best subserved by leaving them off.

Yours very truly,
RIVERS BUFORD,
Attorney General.

HIGHWAYS—BRIDGES—TOLLS

Tallahassee, Fla., August 4, 1923.

*Hon. W. H. Malone,
Key West, Fla.*

Dear Senator:

I have your letter of August 2d in which you ask my views as to whether or not under the existing General Law that Boards of County Commissioners may after an election, duly called and held for that purpose, issue bonds and with the proceeds thereof construct a road or bridge and after the construction of the same collect tolls from the public passing over such road or bridge.

I have had occasion to look into this subject heretofore and, therefore, I am able to give you my view of the matter without delay.

I am of the opinion that the Board of County Commissioners is clothed with authority which is specifically prescribed by statute or that which necessarily follows as an incident to the proper performing of those functions which are specifically prescribed by statute. I think the County Commissioners are without authority to collect tolls on roads or bridges constructed with public funds, except in such cases where such tolls have been authorized by legislative enactment.

A careful perusal of the opinion in the case of State, ex rel., Young, et al., vs. Duval County, 76 Fla. 180, will disclose that the collection of tolls and the fixing of the rate of tolls on bridges constructed under authority vested in the Board of County Commissioners can only be maintained upon the theory that the Legislature has the power to authorize such procedure and that that power has been exercised by the Legislature in so far as it must be directly

exercised, and has been lawfully delegated by the Legislature in other respects.

With kindest personal regards, I am,

Yours very truly,

RIVERS BUFORD,

Attorney General.

ELECTIONS—PRIMARY—VOTERS—NEGROES.

Tallahassee, Fla., August 16, 1923.

*Hon. B. L. Blackburn,
Supervisor of Registration,
Tampa, Fla.*

Dear Sir:

Replying to your letter of August 14th, I beg to say that whether or not negroes will be allowed to vote in any Primary would depend entirely upon the call of the Executive Committee of the party holding the Primary. The Primary Law applies to all political parties, but Section 320, Revised General Statutes of Florida, authorizes the State Executive Committee to declare terms upon which electors may be deemed to be members of the party and, therefore, the Executive Committee of any political party may confine its memberships to the white race if it wishes to do so and in such cases only white electors could participate in the Primary of such party. Every elector who registers under the law of the State of Florida should declare his party affiliation and the same should be entered upon the registration book as he declares it. The fact that a negro registers as a Democrat will give him no right to cast a ballot in a Democratic Primary called to be held by the white Democratic voters of the State.

Yours very truly,

RIVERS BUFORD,

Attorney General.

SCHOOLS—SPECIAL DISTRICTS—POWERS OF
TRUSTEES.

Tallahassee, Fla., August 20, 1923.

*Hon. W. R. Fletcher,
County Superintendent,
Cross City, Fla.*

Dear Sir:

Replying to your letter of the 18th instant, I beg to say that Trustees of Special Tax School Districts are authorized to "say what proportion of the school funds raised within the District shall be applied in any year to buildings, repairs on buildings, for school libraries, to salaries of teachers and to other educational purposes." All contracts should be made by the County Board of Public Instruction.

The Trustees have no authority to employ teachers; they are only authorized to nominate teachers and the County Board of Public Instruction is not bound to follow the nominations. I assume that you are familiar with the statute on this particular subject, which will be found in Sections 569 to 575, inclusive, Revised General Statutes of Florida.

Yours very truly,
RIVERS BUFORD,
Attorney General.

SHERIFF—PER DIEM—COURT ATTENDANCE.

Tallahassee, Fla., August 20, 1923.

*Hon. J. E. Albritton,
Sheriff of Lee County,
Ft. Myers, Fla.*

Dear Sir :

Replying to your letter of the 16th instant, I beg to say that a Sheriff, Deputy Sheriff or Constatble, when acting as Executive Officer of the Court, is entitled to \$4.00 for each day or fraction thereof that he is required in attendance upon the Court. It is only proper for one officer to collect for attendance upon the same Court for any one day. The number of cases either tried or otherwise disposed of is immaterial. The officer is entitled to the same fee whether his attendance is required for a few minutes to dispose of one case or is required for all day in the disposition of many cases. The fee should be pro-rated between those cases disposed of and the proportionate part taxed as other costs in each case.

Whenever the Court is open by order of the Judge thereof for the disposition of matters pending, it is the duty of the Executive Officer to be present and to attend the orders of the Court, and if no cases are actually disposed of the Sheriff is entitled to his fee for such attendance to be paid by the County. The statute does not confine the fee to regular terms of Court.

Yours very truly,
RIVERS BUFORD,
Attorney General.

ELECTIONS—SHERIFF OR DEPUTY—ATTEND- ANCE.

Tallahassee, September 10, 1923.

*Hon. W. C. Spencer,
Sheriff Hillsborough County,
Tampa, Fla.*

Dear Sir:

Replying to your letter of September 7th, I beg to say:
Section 271, Revised General Statutes, provides as follows:

“271. NOT TO GO WITHIN FIFTEEN FEET OF POLLING PLACES.—Except as electors are admitted, one at a time, to vote, and except the sheriff or his deputy, the inspectors and clerks of election, and as many electors as there may be booths or compartments, no person shall be permitted within fifteen feet of the polling place. No sheriff, deputy sheriff or city policeman shall enter the polling place without permission from a majority of the inspectors of the election except to cast his ballot.”

Section 362, Revised General Statutes, is as follows:

“362. GENERAL ELECTION LAW TO APPLY.—The primary elections required by this article, except as herein otherwise provided, shall be held in accordance with the provisions of Article 1, Chapter 1, of Title IV, First Division of these Revised General Statutes of Florida: Provided, however, That county commissioners and members of the board of public instruction shall be nominated by the several districts of the county instead of by the county at large.”

Section 363, Revised General Statutes, is as follows:

“363. PRIMARY ELECTION IN MUNICIPALITY.—Whenever any political party in any municipality in this State shall have determined

by its city committee, or in the absence of a city committee, then by its county committee, to hold a primary election for the nomination of candidates for city offices, such primary election shall be held in all respects in conformity with the provisions of this article, so far as said provisions can be made to apply. In any case where there is not city committee of the political party within any city where a primary election is to be held, the county committee for such county shall make provision for and designate a city committee to serve until their successors shall be elected at the city primary. The city committee shall call and make all necessary regulations for the holding of such primary to the same extent that county committees are authorized to do under the provisions of this article."

Construing these Sections together, it appears to be the duty of the Sheriff to place a Deputy at each voting precinct for the purpose of maintaining order and to assist at the direction of the Inspectors in seeing that the law is properly observed.

You will observe that under the provisions of Section 271, Revised General Statutes, no Sheriff, Deputy Sheriff, or City Policeman shall be allowed to enter the polling place without permission of a majority of the Inspectors of the election, except to cast his own ballot.

In my opinion in the instance referred to in your letter the Governor was entirely within his rights when ordering the Sheriff to place a Deputy at each polling place in a municipal election to keep order and to enforce the law. I think, however, the Sheriff would have been entirely within his rights had he pursued such course without specific orders from the Governor.

Yours very truly,
 RIVERS BUFORD,
 Attorney General.

TAXATION—ASSESSMENTS—UNKNOWN.

Tallahassee, Fla., September 13, 1923.

*Hon. J. D. Nixon,
Tax Assessor,
Vernon, Fla.*

Dear Sir:

All lands and timber leases should be assessed as "unknown" unless return thereof is made by the owner.

The Tax Assessor is not authorized to in any manner determine who the owner is and the law in regard to the assessment of real property is such that the Assessor must assess the property as "unknown" unless the return is made for the assessment by the person claiming to be the owner, and if the Assessor assumes from any source of information to assess real property other than as "unknown" when it has not been returned for that assessment by the person claiming to be the owner, then it becomes an invalid assessment.

Yours very truly,
RIVERS BUFORD,
Attorney General.

COURTS—JUSTICE OF PEACE—SEARCH
WARRANTS.

Tallahassee, Fla., October 10, 1923.

*Mr. Chas. W. Cock,
Justice of the Peace,
Camp Walton, Fla.*

Dear Sir:

Replying to your letter of October 6th, I beg to say that

under the provisions of Section 5487, Revised General Statutes of Florida, in Counties where there is no Court of Record, Criminal Court of Record, or County Court, the County Judges' Court has exclusive jurisdiction of all criminal prosecutions for first offenses constituting a violation of the Prohibition Laws. A Justice of the Peace may issue search warrants but is not authorized to conduct the trial of persons charged with the violation of these particular statutes.

Yours very truly,
RIVERS BUFORD,
Attorney General.

CONVICTS—DISCHARGE—COMPENSATION.

Tallahassee, Fla., October 11, 1923.

*Hon. R. E. Brown,
Attorney County Commissioners,
Arcadia, Fla.*

Dear Sir :

Your letter of September 29 addressed to Hon. Ernest Amos has been transmitted to me for reply.

The provisions of Chapter 9203, Acts of 1923, in regard to the amount to be paid to a prisoner upon his discharge has nothing whatever to do with the provisions of Section 6222, Revised General Statutes of Florida. The provisions in Chapter 9203 applies to convicts who have served out the sentence or who have received a pardon or parole. Section 6222 applies to convicts, who are sentenced to pay a fine in a certain amount or in default thereof to serve a certain prison sentence and who have begun the service of their sentence, arranging to pay the fine in which event they are entitled to credit on the amount of the fine and cost imposed in a sum equal to the amount of 30c per day

for each day which such convict may have worked, or may have been imprisoned. For instance, a convict is sentenced to pay a fine of \$100.00 and \$20.00 costs, or in default thereof to serve 6 months in jail. If he serves 20 days and makes arrangements to pay his fine and costs he is entitled to credit of \$6.00 and is entitled to his discharge compensation as provided in Chapter 9203. If, however, the convict serves out his sentence he is not entitled to receive any compensation for the days he has served, but is only entitled to receive his discharge compensation.

Yours very truly,

RIVERS BUFORD,

Attorney General.

JAILS—JANITORS—MATRONS.

Tallahassee, Fla., October 29, 1923.

*Hon. John E. Mathews,
Bisbee Bldg.,
Jacksonville, Fla.*

Dear Sir:

Replying to your letter of the 27th instant in regard to the employment of a matron for female prisoners in Duval County Jail and referring to my letter of July 15, 1921, addressed to Mr. T. W. Jones of Milton, Fla., published on page 292 of Attorney General's Report for 1921-1922 and my letter of December 27, 1921, addressed to Hon. J. Turner Butler of Jacksonville, Fla., published in the same Report on page 354, I beg to say:

The letter to Hon. T. W. Jones was based upon a statement from the Sheriff and Board of County Commissioners through Mr. Jones, as Clerk, that all fees received for committing, releasing and feeding prisoners would not suffice to pay the meager salary of a keeper of the jail and

because of the condition of the jail it was deemed necessary to keep some one there. Mr. Butler's letter did not refer to a jailor but to a janitor, and I do not think it is incumbent upon the Board of County Commissioners to appropriate money to pay for services of a janitor for a jail.

It is my opinion that under the facts stated in your letter the Sheriff is responsible for the prisoners in jail and he is specifically chargeable with the execution of Section 6214, Revised General Statutes of Florida. That it is a matter for him to determine whether or not it is necessary or expedient to employ a matron at the jail to perform that service for female prisoners, which may not be properly performed by a male janitor or jailor. I deem it to be the duty of the Sheriff, if necessary, to expend all the fees received for committing to jail, releasing or discharging from jail and profits, if any, on feeding prisoners, toward the proper care of prisoners in jail, but the duty also rests upon the Board of County Commissioners to provide for the proper care of prisoners confined in the jail, and therefore, if it appears to the Board of County Commissioners that a matron is required at the jail to properly provide for prisoners therein and that the jail fees are inadequate to meet such requirements, then the County Commissioners may, if they see fit, appropriate a supplemental fund to provide the salary of such matron. In other words, it is the direct duty of the Sheriff to provide these things if his fees are sufficient to provide them, but if in the judgment of the Board of County Commissioners they are necessary and the Sheriff's fees are insufficient to provide them, it becomes the duty of the Board of County Commissioners to make provision for the same.

Yours very truly,
RIVERS BUFORD,
Attorney General.

COUNTIES—CONTINGENT FUND—PUBLICITY.

Tallahassee, Fla., November 16, 1923.

*Mr. J. R. Peacock,
Blountstown, Fla.*

Dear Sir:

Replying to your letter of the 15th instant, I beg to say it is my opinion that if the County Commissioners have a surplus in the fund for Contingent Expenses that a reasonable amount of this fund may be used for publicity purposes.

Yours very truly,
RIVERS BUFORD,
Attorney General.

LANDS—TRESPASS WHERE SOLD TO STATE FOR TAXES.

Tallahassee, Fla., November 22, 1923.

*Hon. P. L. Tippins, Supt.,
Public Schools of Clay Co.,
Green Cove Springs, Fla.*

Dear Sir:

I have your letter of the 21st instant and in reply thereto, I beg to say that we have a very stringent law in this State against removing or working for turpentine purposes, any timber on lands which have been sold for taxes.

Section 5279, Revised General Statutes, reads as follows:

“That hereafter no person shall cut and remove or remove or cause or procure to be cut and removed, or re-

moved, or aid, assist or be employed in cutting and removing, or removing or in any manner working for turpentine purposes any timber on any land in this State when there shall be any unredeemed and outstanding tax sale certificates against such land, timber and turpentine privileges; and no person shall cut and remove, or remove or cause or procure to be cut and removed, or removed, or aid, assist or be employed in cutting and removing or removing any timber from any lands in this State when there shall be any unredeemed or outstanding tax sale certificates against any such timber or timber privileges; and no person shall in any manner work for turpentine purposes or cause or procure to be worked for turpentine purposes or aid, assist or be employed in working for turpentine purposes any pine timber or any lands in this State when there shall be any unredeemed and outstanding tax sale certificates against such timber or turpentine privileges: Provided, That this Section shall not apply to the cutting of timber when the taxes on the timber shall have been paid or the turpentine privilege when the taxes on the turpentine privileges shall have been paid. That any person violating any of the provisions of this Section shall upon conviction therefor be punished by a fine of not more than one thousand dollars or be imprisoned not exceeding one year, or by both fine and imprisonment at the discretion of the court."

Section 5280, Revised General Statutes, reads as follows:

"If at any time after six months, after the sale of the timber or turpentine rights for non-payment of taxes due there on, the former owner thereof, or his agents or servants, shall take or use any of such timber or turpentine they shall each be guilty of a misdemeanor, and upon conviction shall pay a fine of not less than fifty dollars or be imprisoned not more than six months."

From the above quoted Sections of our statutes you will observe that when a person allows lands to be sold for taxes it is then unlawful for him to use the same by re-

moving timber therefrom or by working the same for turpentine purposes.

Yours very truly,
RIVERS BUFORD,
Attorney General.

COURTS—JUSTICE OF PEACE—POWERS.

Tallahassee, Fla., November 26, 1923.

*Mr. Jos. Henschen,
Justice of the Peace,
Oakland, Fla.*

Dear Sir:

Replying to your letter of the 23rd instant, I beg to say:

(1) A Justice of the Peace when once qualified holds his office until his successor shall have been elected or appointed and qualified.

(2) A Justice of the Peace may only appoint a Constable to serve a specified paper, which appointment must be endorsed upon the paper to be served and which appointment can only be made when it is not practicable to have a Sheriff, Deputy Sheriff or Constable execute the paper.

(3) A Justice of the Peace cannot appoint a Constable for general service.

(4) A Justice of the Peace cannot lawfully execute process issuing out of his Court.

(5) A Justice of the Peace may issue attachment in emergency cases where the amount involved is more than \$100.00 in making the same returnable to the Circuit Court or the County Court, as jurisdiction may exist, but he has no authority to serve a paper.

Yours very truly,
RIVERS BUFORD,
Attorney General.

PROSECUTING ATTORNEY—COMPENSATION.

Tallahassee, Fla., December 3, 1923.

*Hon. A. J. Hamilton, Chrmn.,
Board of County Commissioners,
Moore Haven, Fla.*

Dear Sir:

Replying to your telegram of December 1st, I beg to say:

The Statute provides fees and compensation which shall be paid to Prosecuting Attorneys in County Courts and, therefore, for the performance of the duties of Prosecuting Attorney in such Court the compensation is limited to the amount fixed by statute. If, however, the Board of County Commissioners sees fit to employ the same attorney to represent the County in the County Judge's Court in the prosecutions upon preliminary hearing of cases, the trial jurisdiction of which is in the Circuit Court, I know of no reason why they could not lawfully employ such attorney and pay him additional compensation for this work, which does not constitute a part of his official duties as County Prosecuting Attorney in and for the County Court.

Yours very truly,
RIVERS BUFORD,
Attorney General.

CORPORATIONS—DECLARATION OF TRUST.

Tallahassee, Fla., January 5, 1924.

*Hon. T. G. Futch,
Leesburg, Fla.*

Dear Sir:

Replying to your letter of January 3rd, I beg to say:
My construction of Chapter 9125, Acts of 1923, is that all associations doing business under what is known as a Declaration of Trust must comply with the provisions of this Chapter to be authorized to do business as an association of that character. I think that unless the associations so organized comply with the provisions of this Chapter that they occupy the status of co-partnerships and could not claim the advantages intended under the Declarations of Trust.

Yours very truly,
RIVERS BUFORD,
Attorney General.

ELECTIONS—POLL TAXES—WHEN PAID.

Tallahassee, Fla., January 11, 1924.

*Hon. B. L. Blackburn,
Supervisor of Registration,
Tampa, Fla.*

Dear Sir:

Replying to your letter of the 9th instant, I beg to say that Chapter 8583, Acts of 1921, amending Section 215, Revised General Statutes, applies to General Elections and requires that poll tax shall be paid "at least on or before

the fourth Saturday preceding the day of the election." To arrive at this you count back four Saturdays from the date of the election.

Section 314, Revised General Statutes, applying to Primary Elections provides that "no person * * * shall be permitted to vote in a Primary Election who shall have failed to pay, at least on or before the second Saturday in the month preceding the day of such election, his poll taxes for two years next preceding the year in which such Primary Election shall be held." The Supreme Court has held that the "second Saturday in the month next preceding the day of the election" means the second Saturday in the 30 days next preceding the date of the election.

The Primary in 1924 will occur on the first Tuesday after the first Monday in June, which will be the 3rd day of June. Therefore, the month immediately preceding the date of the election will begin on Saturday the 3rd day of May and the second Saturday in that 30 days will be Saturday, the 10th day of May.

Yours very truly,
RIVERS BUFORD,
Attorney General.

TAXATNON—LICENSE—REAL ESTATE BROKERS.

Tallahassee, Fla., Janury 25, 1924.

*Mr. J. S. Masek, Secretary,
McElroy Bldg.,
Orlando, Fla.*

Dear Sir:

Replying to your letter of January 22nd, I beg to say it is my opinion that under Section 3 of Chapter 9177, Acts of 1923, it becomes the duty of the person authorized

to issue licenses to real estate brokers and real estate salesmen to satisfy himself that the person applying for license is trustworthy and bears a good reputation for honesty and fair dealing and is competent to transact the business of a broker or salesman and, in doing this he may make such investigation as may be necessary to satisfy himself.

Yours very truly,

RIVERS BUFORD,

Attorney General.

FUGITIVES FROM JUSTICE—EXTRADITION—
FOREIGN.

Tallahassee, Fla., February 1, 1924.

*Mr. J. L. Hampton, Sheriff,
Arcadia, Fla.*

Dear Sir:

I have your letters of the 30th and 31st of January last in reference to requisition for extradition of one Odom.

To procure the extradition of an alleged fugitive from justice who may be sojourning in the Dominion of Canada, you must make your application to the Governor of Florida in the usual way as in cases of rendition from other states of the United States. The Governor will then make application to the United States Department of State asking that Department to make requisition on the Canadian Government for a warrant of extradition.

But in cases of this kind fuller details and greater particularity is required than in interstate rendition. The following documents must be furnished, *and in duplicate*:

1. Copy of Indictment.
2. Copy of Capias.
3. The usual "Application for Requisition" (Form 5, two of which are enclosed.)
4. Affidavit of State Attorney, (and, if possible of other parties) setting forth such statement of the facts as

to show that the party, whose extradition is sought, is *prima facie* guilty of the crime charged.

The copies of indictment and capias must be authenticated under the Act of Congress, forms of which the State Attorney, or any other competent lawyer, can prepare.

All the affidavits mentioned must be sworn to before a qualified officer, and the official character of such officer must be authenticated by the appropriate County Officer. The official character of the latter will in turn have to be authenticated here by the Secretary of State, and this can be done when papers reach here.

It is imperative that *two* complete sets of above named papers be supplied, and authenticated as noted.

Very truly yours,

RIVERS BUFORD,

Attorney General.

WEAPONS—FIRE ARMS—LICENSES.

Tallahassee, Fla., February 13, 1924.

*Mr. L. L. Barber,
Clerk Circuit Court,
Cross City, Fla.*

Dear Sir:

Replying to your letter of the 11th instant addressed to Hon. Nathan Mayo, Commissioner of Agriculture, I beg to say there is no such thing as a State License for carrying fire arms. County Commissioners are authorized to issue licenses under certain conditions to persons to carry pistols, revolvers and repeating rifles, but such license does not authorize the holder thereof to carry any weapon concealed.

Yours very truly,

RIVERS BUFORD,

Attorney General.

SCHOOLS—SUSPENSION OF PUPILS.

Tallahassee, Fla., March 1, 1924.

*Hon. J. W. Burns,
County Superintendent,
Lake City, Fla.*

Dear Sir:

School officials are vested with only that authority which is imposed by statute. No officials are authorized to permanently expel a child from school under the law of this State. A child may be suspended for the period provided by statute.

If a child is incorrigible and can not be controlled, such child should be committed to one of the Industrial Schools for incorrigibles.

Yours very truly,
RIVERS BUFORD,
Attorney General.

LANDS—WATER LINES.

Tallahassee, Fla., March 3, 1924.

*Mr. O. U. Metcalf,
Box 413,
Lake Wales, Fla.*

Dear Sir:

Replying to your letter of February 28 in regard to the extension of land lines from mean high water mark to the present meander lines of the waters of Lake Pierce, I beg to say:

I judge from the contents of your letter that the waters

of the Lake had receded from the original mean high water mark. As a general rule where land lines are extended from high water mark to the water's edge they are extended at right angles with the contour of the shore and this has usually been the practice of the Board of Trustees of the Internal Improvement Fund when disposing of such lands as appear to be referred to in your letter. If the situation is as it appears to me to be from the contents of your letter, you have no legal right to fence or to assume control of the lands below the high water mark. The title to this land is vested in the State of Florida in its sovereign capacity. See

Broward, et al., v. Mabry, 58 Fla. 399.

Brickell v. Trammell, 77 Fla. 544.

Since the decision was rendered in the case of Broward vs. Mabry, the Legislature has authorized the Trustees of the Internal Improvement Fund, under certain conditions, to convey the title to these bottom lands, which formerly could not be conveyed.

Yours very truly,

RIVERS BUFORD,

Attorney General.

COURTS—SHERIFF ACTING AS EXECUTIVE
WHEN WITNESS.

Tallahassee, Fla., March 6, 1924.

*Hon. Frank Stoutamire,
Sheriff Leon County,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of March 5 asking my opinion as to whether or not a Sheriff, or Deputy Sheriff, is disqualified to act as Executive Officer of the Court in sum-

moning of jurors in cases where such officer is a witness, I beg to say:

It is my opinion the fact that a Sheriff or Deputy Sheriff is a witness in a case either criminal or civil does not disqualify such officer to act as the Executive Officer of the Court when that particular case is on trial or to be tried. It is the duty of the Sheriff and his Deputies to enforce the criminal laws of this State, and it becomes their duty to testify as witnesses when facts showing the violations of the law are within their knowledge and, by doing so, such officer does not forfeit his authority to summons jurors under a venire issued for that purpose, nor to perform any other official duty in connection with such case.

Yours very truly,

RIVERS BUFORD,

Attorney General.

SHERIFF—FEEDING PRISONERS.

Tallahassee, Fla., March 14, 1924.

*Hon. H. C. Mitchell,
Sheriff Santa Rosa County,
Milton, Fla.*

Dear Sheriff:

Replying to your letter of March 13, I beg to say:

It is my opinion that you, as Sheriff, are required to furnish each prisoner confined in the public jail of Santa Rosa County regular and wholesome meals and that you are entitled to charge the fixed fees for each of these meals so furnished. Whether a prisoner eats all of his meals, a part of his meal, or none of his meal, is a matter about which he may consult his own pleasure and comfort, but that he refuses to eat the meal does not relieve you of your

duty to place the same before him at regular intervals and thereby give him the opportunity to exercise his own pleasure about the consumption thereof.

Yours very truly,

RIVERS BUFORD,

Attorney General.

SUPERVISOR OF REGISTRATION—WHO MAY
REGISTER.

Tallahassee, Fla., March 20, 1924.

*Hon. B. L. Blackburn,
Supervisor of Registration,
Tampa, Fla.*

Dear Sir:

Replying to your letter of March 17.

I do not see how any question can be raised as to who is entitled to register to qualify to vote in a General Primary Election. This question is definitely settled in Section 312, Revised General Statutes of Florida, which provides: "That any person otherwise qualified, who shall become of legal voting age, or shall have resided in the State one year and in the County six months between the date of the closing of registration books and the holding of the General Primary Election, may upon personal appearance before the Supervisor of Registration make an affidavit containing the date on which he will become of legal voting age, or will have completed a legal voting residence, in the State or County, shall thereupon be registered and be a qualified elector in said General Primary Election."

This certainly means that if a person will have become qualified by reason of age or residence between the closing of the registration books and the date of the Primary, that

such persons may register while the registration books are open.

I find no authority of law for the registration of a person to vote in the Primary who will not become of legal voting age, or who will not have completed the legal voting residence, prior to the date of the Primary.

Yours very truly,

RIVERS BUFORD,

Attorney General.

SCHOOLS—SCHOLARSHIPS.

Tallahassee, Fla., April 9, 1924.

*Hon. W. C. Hodges,
Senator, 8th District,
Tallahassee, Fla.*

Dear Senator:

Replying to your letter of April 8th, in which you ask my construction of Chapter 9134, Acts of 1923,—“AN ACT Providing for Scholarships in Each of the Two Institutions of Higher Learning from the Various Counties of the State, and Making Appropriation Therefor” and particularly what scholarships will be available under this Chapter,” I beg to say:

My construction is that Section 1 of said Chapter provides for a scholarship to be awarded for a man at the University of Florida and for a woman at the Florida State College for Women in each County each year, and Section 4 provides that each of these scholarships shall be renewable from year to year for not more than four years from the date of its issuing on the basis of professional fitness of the students holding them.

The result will necessarily be that a scholarship will be awarded to a man in the University of Florida and to a

woman in the Florida State College for women on competitive examination between eligible persons each year and, if the person receiving the scholarship shall demonstrate professional fitness, then such scholarship shall be renewed to such person from year to year for not more than four years.

I assume it will be necessary for the State Board of Education to adopt some rule of procedure to determine the question of professional fitness of a student applying for a renewal of the scholarship.

It occurs to me that the Legislature might have wisely provided a standard under which the student would be entitled to a renewal of the scholarship so as to have avoided the necessity of any one having to determine just what constitutes "professional fitness" on the part of the student.

Yours very truly,

RIVERS BUFORD,

Attorney General.

STATE BOARD OF HEALTH—EMPLOYEES—
ABSENCE—COMPENSATION.

Tallahassee, Fla., April 17, 1924.

*Dr. Calvin T. Young,
Plant City, Fla.*

Dear Doctor:

I have your letter of April 15th, asking my opinion as to whether or not the State Board of Health would be authorized to continue the payment of salaries to persons in the employ of that Board while such persons are absent from their employment for the purpose of improving their education and to increase their efficiency, and in reply thereto, I beg to say:

There is no particular statute governing this question, but it is the uniform rule of all State Departments to allow no more than two weeks absence from employment per year without pay, except in cases of inability on account of sickness, and I think it would be well for all State Departments to adhere to this policy.

If a department allows one employee leave of absence on pay for a period of two months, there is no reason why it should not allow every other employee who may wish to improve his or her efficiency by attending schools or lectures a like privilege, and if two months is allowed then there is no reason why three or six months might not be as reasonably demanded.

I can readily see that it might be of much advantage to a department to have an employee take special courses, so that such employee might become more efficient, and that the course suggested in your letter would be justified, but certainly in such cases the employee should be required to enter into a written agreement to remain in the employment of the Board and conform to its rules and regulations for a sufficient period, after taking such course at the salary then being paid to justify the department in making the investment, say for one year or two years, or whatever period of time would be deemed adequate, with a condition that if such employee quit, the employment of the Department within that time, the amount of the salary paid during absence to be returned to the department.

Yours very truly,

RIVERS, BUFORD,

Attorney General.

COURTS—SEARCH WARRANTS.

Tallahassee, Fla., April 17, 1924.

*Hon. H. C. Mitchell,
Sheriff, Santa Rosa County,
Milton, Fla.*

Dear Sir:

Replying to your letter of April 15th, I beg to say that I hardly know how to answer your questions. The Sections referred to in your letter which you ask me to construe for you express their meaning as plainly as it appears it is possible to express them. However, I will try to give you my understanding of each Section as requested.

My construction is that Section 2 of Chapter 9321, Acts of 1923, means that the constitutional provisions against *unreasonable* seizure and searches shall be invoked, and when a search is necessary a warrant must be issued authorizing the same and that the warrant can only be issued upon the presentation to the Magistrate of an affidavit or affirmation particularly describing the place or places to be searched and describing and naming, if possible, the person or persons, or thing or things, to be taken into custody. The affidavit must so describe the place as to enable the person who has no other knowledge than that contained in the affidavit to definitely locate it, and must also describe the person or thing to be taken into custody in the same manner.

Section 5 means the same thing as Section 2 and provides further that a warrant issued upon such affidavit as is required by Section 2 becomes ineffective and void after 10 days from the issuance thereof.

Section 6 means that the place, person and thing must not only be described as is required by Section 2 and Section 5, but all the facts which constitute and are the basis for the reason of affiant to believe that the law is being violated, must be set out in the affidavit and must

be sufficient to give the Magistrate cause to believe that if such facts as are set out are true, the law is being so violated.

Section 7 means that if the Magistrate, after having examined the affidavits and proofs which he has required to be submitted, is satisfied that probable cause exists for the issuing of a search warrant, he is then authorized to issue the warrant.

Section 16 means that if a person, without knowing such facts as would constitute probable cause to believe that the law is being violated as alleged, maliciously procures the issuance of a search warrant and the execution thereof such person may be punished upon conviction of so doing by a fine of not more than \$500.00 and imprisonment of not more than 6 months.

Section 17 means that the officer to whom a search warrant is delivered for execution is only authorized to carry out the directions contained in the search warrant and that in doing so he can do only those things which appear reasonably necessary to its execution.

Section 19 appears to me to be couched in as clear language as I can possibly put its meaning.

Yours very truly,

RIVERS BUFORD,

Attorney General.

TIMBER—SUNKEN.

Tallaassee, Fla., April 18, 1924.

*Hon. Angus Morrison,
Sheriff, Wakulla County,
Crawfordville, Fla.*

Dear Sir:

Replying to your letter of April 16 in regard to timber

which has been sunk in a river from 10 to 25 years and which has been abandoned, I beg to say:

Such timber, in my opinion, would come under the same provisions as that referred to in my letter to Hon. W. A. McRae, Commissioner of Agriculture, under date of October 2, 1922, a copy of which letter I enclose herewith.

Under the facts referred to in the above mentioned letter the proper procedure would be for a report to be made to the County Judge of the approximate amount and location of the timber. Thereupon the County Judge should direct the Sheriff to take charge of the same and sell the same at public outcry after giving a reasonable public notice of the time and place of such sale. I should think that notice in the two issues of the County paper and by posting a copy of the notice where the derelict property is located would be sufficient. The Sheriff, under such notice, should take charge of the property and sell the same to the highest bidder. The Sheriff would be entitled to be compensated for such expenses as he may be put to by putting the timber in a marketable condition not exceeding one-half of the proceeds of the sale, and he would also be entitled to $2\frac{1}{2}\%$ of the gross amount of the sale for his commission for making the sale, the balance of the money after paying the salvage and Sheriff's commission should be held by the Sheriff and from this he should pay 1% of such balance to the County Judge for his services. Then the Sheriff should hold the net balance for a period of 1 year and 1 day subject to the claim of any person who may come and prove ownership of the property. At the end of the period of 1 year and a day, the Sheriff should deliver the balance in his hand to the Commissioner of Agriculture of the State of Florida.

Yours very truly,

RIVERS BUFORD,

Attorney General.

ELECTION—VOTERS—RESIDENCE.

Tallahassee, Fla., April 18, 1924.

*Hon. Angus Morrison,
Sheriff, Wakulla County,
Crawfordville, Fla.*

Dear Sir:

Replying to your letter of April 16, I beg to advise it is my opinion that where a voter registers in a precinct and votes and afterwards takes employment elsewhere, but does not transfer his registration or vote in any other precinct or place, he then retains his voting precinct at the place where he is so registered.

Where a voter has been living and voting in a precinct and is registered in that precinct and is still living and expects to live in that precinct, he cannot lawfully register and vote in any other precinct.

Where a voter has been living and voting in a precinct and leaves and lives out of such precinct temporarily and goes into another County or State, retaining his property and home in the original precinct and County and does not transfer his registration and does not register or vote elsewhere, and his name is stricken from the registration roll by the Board of County Commissioners, it is proper for him to make application to the Board of County Commissioners to have his name re-instated upon the registration roll, and upon a showing of such facts such name should be re-instated.

A person who has lived in a certain precinct and owns property there, but has never registered or voted in that precinct, and who is now and has been for the past 6 months living outside of the precinct, is not in a position to make

the necessary affidavit to qualify in that precinct from which he or she has removed.

Yours very truly,
RIVERS BUFORD,
Attorney General.

SCHOOLS—SPECIAL DISTRICTS—BUILDINGS.

Tallahassee, Fla., April 21, 1924.

Mr. D. H. Horne,
County Superintendent,
Inverness, Fla.

Dear Sir:

I have your letter of April 19th.

I certainly would not advise you to attempt to consolidate or create School Districts without first employing a competent Attorney to guide you in such matters.

It does not appear that it is possible for you to accomplish the purpose which you propose in your letter. There is no provision whereby you can levy a Special Tax in one District and use the same in another District. Therefore, you could not build your High School in one Special Tax School District and pro-rate the expense between that District and two other Districts adjoining it. It occurs to me, however, that you might be able ultimately to consolidate the three Districts into one. To do this, however, it would require considerable time because the time for holding your elections in the several Districts is fixed by the Constitution and also because of the necessity of arranging the finances so as to take care of outstanding obligations of each District.

Chapter 8555, Acts of 1921, was evidently passed to take care of just such situations as you are confronted with

and Section 2 of this Chapter defines the procedure to be used in such cases.

Yours very truly,
RIVERS BUFORD,
Attorney General.

SUPERVISOR OF REGISTRATION—VOTER REGIS-
TERING WHEN PAYING POLL TAX.

Tallahassee, Fla., April 19, 1924.

*Hon. F. M. Ironmonger,
Supervisor of Registration,
Jacksonville, Fla.*

Dear Sir:

It is my opinion, under Section 313, Revised General Statutes, any persons "*when paying their poll taxes*" may make affidavit provided for in this Section before the Tax Collector and it thereupon becomes the Tax Collector's duty to immediately file that affidavit with the Supervisor of Registration whose duty it is then to register the name of such person on the proper registration list.

I do not think the affidavit is authorized to be taken except when the person making the same is then paying his or her poll tax.

All persons paying their poll tax on or before the second Saturday in the month preceding the election, which in the case of the coming election will be Saturday the 10th day of May and who are otherwise qualified are entitled to vote. Therefore, persons paying the requisite poll tax and making affidavit provided for under Section 313, Revised General Statutes, on or before Saturday the 10th day of May, will be entitled to have their names placed

upon the registration roll and will be entitled to vote in the Primary election.

Yours very truly,
RIVERS BUFORD,
Attorney General.

TAXATION—ASSESSMENT—EXEMPTION.

Tallahassee, April 22, 1924.

*Hon. F. C. Poppell,
Tax Assessor, St. Lucie Co.,
Fort Pierce, Fla.*

Dear Sir:

Replying to your letter of April 21, I beg to say:
Paragraph Seventh of Section 697, Revised General Statutes of Florida, reads as follows:

“There shall be exempt from taxation, property to the value of five hundred dollars to every widow that has a family dependent on her for support, and to every person who is a bona fide resident of the State, and has lost a limb or been disabled in war or by misfortune.”

It appears from reading of this Section that a person who has been disabled in War or by misfortune and is a bona fide resident of the State of Florida, is entitled to an exemption from taxation of property to the value of \$500.00.

These exemptions, of course, must be allowed by the Board of County Commissioners. It is proper for the assessment to be made and the exemption to be claimed and thereupon the County Commissioners must pass upon the validity of the claim and if it is proper to allow the same.

Yours very truly,
RIVERS BUFORD,
Attorney General.

ELECTIONS—SCHOOL DISTRICTS—MARRIED
WOMEN.

Tallahassee, Fla., May 5, 1924.

*Hon. Jesse Montague,
County Superintendent,
Inverness, Fla.*

Dear Sir:

Replying to your letter of May 3, I beg to say the fact that a husband owns real estate and pays taxes on the same does not constitute the wife a taxpayer so as to entitle her to vote in a School District Election. Neither does the fact that a married woman who owns property and pays taxes qualify her husband to vote in such election. The person voting must be the owner of the property and the taxpayer.

A statute providing that persons should be allowed to vote under the conditions mentioned in your letter might be very desirable, but it does not now exist.

Yours very truly,
RIVERS BUFORD,
Attorney General.

SEARCH WARRANTS—PROHIBITION LAWS.

Tallahassee, Fla., May 8, 1924.

*Hon. G. C. Allmon,
Sheriff, Jefferson County,
Monticello, Fla.*

Dear Sir:

Replying to your letter of May 6th, I beg to say:
Under our statutes a search warrant is required to be held by the officer to authorize him to make searches of
9—Atty.

persons, vehicles, houses or other structures for the unlawful possession of intoxicating liquor.

The Supreme Court has passed upon the question and holds in effect where the Sheriff or other Police Officer, without making a search, sees intoxicating liquor in the unlawful possession of another, or being transported in any vehicle, that he is then authorized to make seizure and arrest without warrant, but he is not authorized upon mere information and belief to make a search, unless such search is made in a manner properly incident to the making of a lawful arrest in a lawful manner. See *State, ex rel. Stillman vs. Merritt*, 99 So. 280.

Yours very truly,

RIVERS BUFORD,

Attorney General.

ELECTION—ABSENT VOTERS.

Tallahassee Fla., May 9, 1924.

*Hon. Thomas B. Bird,
County Judge,
Monticello, Fla.*

Dear Sir:

Replying to your letter of May 8th, I beg to say it is my opinion that Chapter 7380, Acts of 1917, only applies to persons who are absent from the County in which they vote and does not apply to persons who are in the County but absent from the precinct in which they are qualified to vote.

Yours very truly,

RIVERS BUFORD,

Attorney General.

ROAD AND BRIDGE DISTRICTS—CREATION.

Tallahassee, Fla., May 10, 1924.

*Hon. L. L. Barber,
Clerk Circuit Court,
Cross City, Fla.*

My dear Sir:

Replying to your letter of May 7th, I beg to say that I know of no legal cause or reason why a stated area within Dixie County, which County constitutes a Special Road and Bridge District upon which bonds have been issued and sold, can not be created into a Special Tax Road District under the provisions of Sections 1647 to 1666, Revised General Statutes of Florida. This Chapter does not appear to contemplate the election of Trustees for such Special Tax Road District, but leaves the entire matter for handling such Districts in the hands of the Board of County Commissioners.

I deem it very unwise for any Board of County Commissioners to attempt to create any Special Road and Bridge District, whether it proposes to issue bonds or merely to levy an annual tax, and to proceed with the creation and formation of such District without the guidance of an attorney having experience in such matters.

You understand, of course, that I, as Attorney General, can only advise you in a very general way and can not assume to direct your Board in its necessary legal steps to be taken in such matters.

Yours very truly,
RIVERS BUFORD,
Attorney General.

SUPERVISOR OF REGISTRATION—VOTERS REGISTERING WHEN PAYING POLL TAXES.

Tallahassee, Fla., May 10, 1924.

*Hon. W. O. Morris,
Supervisor of Registration,
Gainesville, Fla.*

Dear Sir:

Replying to your letter of May 8th, I beg to advise it is my opinion that all persons who file with the Tax Collector at the time of paying their poll tax the affidavit prescribed by Section 313, Revised General Statutes of Florida, should upon the presentation of the affidavit to you have their names placed upon the registration roll, and that all those who pay the poll tax and make and present such affidavits on or before the 10th day of May, A. D. 1924, should be held qualified to vote in the June Primary.

Yours very truly,

RIVERS BUFORD,

Attorney General.

BOND TRUSTEES—COMPENSATION.

Tallahassee, Fla., May 12, 1924.

*Hon. T. R. James,
County Judge, Okaloosa County,
Crestview, Fla.*

Dear Judge:

Replying to your letter of May 10th, I beg to say it is my opinion that the Bond Trustees are entitled to commissions provided under Section 1549, Revised General

Statutes, both on receipts and on disbursements. I called at the Comptroller's office to ascertain upon what Mr. Murrell based his advice to the Board of County Commissioners and Chief Clerk McIntosh advises me that the Comptroller's office has always held that Bond Trustees were entitled to the fee on both receipts and disbursements payable from the General Fund of the County.

Yours very truly,
 RIVERS BUFORD,
 Attorney General.

ELECTIONS—REGISTRATION BOOKS SENT TO
 PRECINCTS.

Tallahassee, Fla., May 14, 1924.

Hon. B. L. Blackburn,
Supervisor of Registration,
Tampa, Fla.

Dear Sir:

I do not understand just what you mean by your intention to send out both books to a precinct on election day.

If you mean you will send out the registration list for the general election and the Primary Registration Book, I think there will be no harm in doing so except that the Clerk and Inspectors must be guided and controlled by the registration as it appears on the Primary Registration Roll because in your County you have the requirement of registering for the Primary every two years and only those are entitled to vote who have complied with the Primary registration law.

Yours very truly,
 RIVERS BUFORD,
 Attorney General.

SUPERVISOR OF REGISTRATION—WHEN ELIGIBLE AS CANDIDATE FOR ANOTHER OFFICE.

Tallahasee, Fla., May 19, 1924.

*Hon. Edward Wotizky,
Supervisor of Registration,
Punta Gorda, Fla.*

Dear Sir:

Your letter of May 16th has been received and contents noted.

I have just wired you as follows:

"My opinion based on your letter is that you are not eligible as candidate for County Judge."

It is my opinion that a Supervisor of Registration is not eligible for election either in the Primary Election or a General Election while he holds the office of Supervisor of Registration until 6 months after he has resigned or otherwise ceased to be a Supervisor of Registration.

The purpose of the law is to prevent one who has control of the registration list from being eligible to any office in any election wherein any registration list is to be used, and for this reason the Legislature made the office of Supervisor of Registration appointive instead of elective.

Yours very truly,
RIVERS BUFORD,
Attorney General.

ELECTIONS—CONVICTS—DISFRANCHISEMENT.

Tallahassee, Fla., May 28, 1924.

*Hon. A. C. Jackson,
Tax Collector Liberty County,
Bristol, Fla.*

Dear Sir:

Replying to your letter of May 27th, I beg to say that a man convicted of forgery is disfranchised until his citizenship is restored by order of the Board of Pardons.

Yours very truly,

RIVERS BUFORD,

Attorney General.

COUNTY COMMISSIONERS—CLERICAL WORK BY
CLERK CIRCUIT COURT.

Tallahassee, Fla., May 30, 1924.

*Hon. T. B. Lancaster, Jr.,
Ocala, Fla.*

Dear Sir:

Replying to your letter of May 29th, I beg to say it is my opinion that the duties imposed upon the Board of county Commissioners under Sections 1563 and 1517, Revised General Statutes, constitute a part of the routine duties of such Board and its Clerk, and that as Clerk of the Board of County Commissioners the Clerk of the Circuit Court is charged with the duty of keeping the accounts and making up the reports. I can find nothing that can justify the Board of County Commissioners in employing any other person to do this particular work and

I do not think they would be justified in paying extra compensation for it.

Yours very truly,
RIVERS BUFORD,
Attorney General.

TAXATION—LICENSE—FISH DEALERS.

Tallahassee, Fla., June 11, 1924.

*Mr. Roy A. O'Bannon,
Deputy Tax Collector,
West Palm Beach, Fla.*

Dear Sir:

Replying to your letter of June 9th, I beg to say:

It is my opinion that Section 1259, Revised General Statutes of Florida, means that retail fish dealers must pay a State tax of \$5.00, a County tax of \$2.50, together with the County Judge's fee of 25c.

Yours very truly,
RIVERS BUFORD,
Attorney General.

SHERIFF—PRISONERS—FEEDING.

Tallahassee, Fla., June 17, 1924.

*Hon. E. E. Boyce,
Sheriff St. Johns County,
St. Augustine, Fla.*

Dear Sir:

Replying to your letter of June 14th, I beg to say, it is my opinion, that it is one of the duties of the Sheriff

of a County to feed the prisoners confined in the County Jail and that he is entitled to the compensation fixed by statute for the feeding of such prisoners. The law makes the Sheriff responsible for the safe-keeping of prisoners confined in the Jail of the County and if he should fail or refuse to properly feed the prisoners confined in the jail he would be guilty of malefeasance in office and, in my opinion, could be properly suspended and removed from office for such failure.

Yours very truly,

RIVERS BUFORD,

Attorney General.

BONDS—BAIL—FINE AND COST APPROVAL.

Tallahassee, Fla., June 21, 1924.

*Hon. Angus Morrison,
Sheriff Wakulla County,
Crawfordville, Fla.*

Dear Sir:

Replying to your letter of June 18th, I beg to say I will answer your questions as near as possible in the order in which they are propounded.

1. I do not think a corporation is a proper surety on a bail bond unless the Charter of the corporation authorizes its officers to execute such bonds.

2. Sections 5982, 5983 and 6046, Revised General Statutes of Florida, state clearly when bail bonds may be approved by the Sheriff and when the same may be approved by the Court. It appears from the provisions of Section 6046 that all bail bonds given in County Judges' Courts and Justices of the Peace Courts, except appeal bonds, may be approved at any time either by the Sheriff or by a

Magistrate issuing the warrant. Appeal bonds must be approved by a Magistrate.

Section 6121, Revised General Statutes of Florida, provides that a fine and cost bond shall be approved by the Court if the Court is in session at the time the bond is given, otherwise such bonds are to be approved by the Sheriff or by the officer acting in that capacity.

My answer to paragraph 2, answers also paragraphs 3 and 4, except this as to paragraph 4—The Sheriff is not responsible for the collection of a fine and cost bond. The statutes provide the course to be pursued in case the bond is not paid at maturity and there is no law making the Sheriff responsible for the payment of the bond. It is his duty to demand payment when the same becomes due and if it is not paid, he should then make return on the bond stating that payment has been refused and deliver the same to the Court from which it was issued. Thereupon judgment should be issued upon said bond by the Court having jurisdiction of the amount thereof against the sureties and execution should be issued upon such judgment. When the Sheriff makes such return on the bond and delivers the same to the Court from which process issued, the Court should issue a commitment for the defendant and the Sheriff should execute the commitment by putting such defendant to serve his sentence.

If the fine and cost bond is paid while the defendant is serving his sentence he should be discharged.

A Sheriff has the right to decline to accept any person as a bondsman from whom he has reason to believe that the bond could not be collected under execution.

A married woman is not proper surety on bond because a judgment against a married woman is void.

A person to be a proper surety on a bond should have visible property sufficient over and above homestead exemption to be good under execution for the amount of the bond. Whether or not a person owning only stock in a

corporation would be a proper surety would depend upon the facts in each case.

There is no reason why a Sheriff should not accept a bond executed by a surety company authorized to do business in this State should the same be tendered because such bonds are the safest to be had.

I think this covers the information you desired.

Yours very truly,

RIVERS BUFORD,

Attorney General.

SCHOOLS—FUNDS—BORROWING.

Tallahassee, Fla., June 25, 1924.

Hon. W. T. Cash,
Perry Fla.

Dear Mr. Cash:

Replying to your letter of June 23rd, I beg to say:

The only construction which the Attorney General may place upon the statutes is what he conceives to be the strict technical construction. Section 458, Revised General Statutes of Florida, appears to me to very positively and clearly state—

“That it shall be unlawful for any school board to borrow any sum of money in any one year in excess of 80% of the amount as estimated by them to be required for the maintenance of the necessary common schools of their County for the next ensuing scholastic year in the manner prescribed by Section 454, sub-section 13, of these Revised General Statutes, which sum so borrowed shall be *paid in full* before the Board shall be authorized to borrow on the estimate of the succeeding year.”

Of course, the giving of a note by the school board for all or any part of the money borrowed will not constitute a payment of that obligation, but is simply an evidence of indebtedness.

I am advised it is a common practice for the County Boards of Public Instruction to disregard the statute and to in many instances assume obligations far beyond the 80% limit and in other instances to pay off a part of the 80%, and thereupon to borrow like sums for a longer period, but I find no authority of law for this practice.

With kindest personal regards, I am,

Yours very truly,

RIVERS BUFORD,

Attorney General.

SHERIFF—FEES.

Tallahassee, Fla., June 25, 1924.

*Hon. E. J. Peacock,
County Judge,
DeLand, Fla.*

Dear Judge:

I have made it a rule not to advise one County Officer in regard to the rights and duties of another County Officer, except to advise the Clerk of the Circuit Court, who is Ex Officio Clerk of the Board of County Commissioners, and is authorized to audit all cost bills in regard to the proper fees of County Officers, and also as to the duties of the Board of County Commissioners when the same is requested by him as the Clerk of that Board.

I have adopted this rule because County Officers are not in any wise under the control or supervision of the office of Attorney General and, therefore, they are not bound by any opinion promulgated from this office, and

it therefore becomes proper only for such opinion to be rendered when it is requested by the Officer whose duty is involved and is sought for the guidance of such officer.

Inasmuch as the County Judge is in no wise responsible for the correctness of the items charged in a Sheriff's cost bill, I do not feel that it would be proper for me to interpose my opinion in a controversy between you and the Sheriff as to such cost bill unless such opinion is requested by the Sheriff for his guidance, or by the Clerk of the Circuit Court for his guidance in auditing cost bills.

Of course, it is well understood that no County Officer has any right to charge fees for constructive service, and to be entitled to receive fees the officer charging the same must have actually rendered the service for which the fee is charged.

Yours very truly,
RIVERS BUFORD,
Attorney General.

SCHOOLS—FUNDS—EXPENDITURES.

Tallahassee, Fla., June 30, 1924.

*Hon. W. W. Clark,
Milton, Fla.*

Dear Sir:

Replying to your letter of June 27th, I beg to say that although the decision in the case of State vs. County Commissioners of Gadsden County, 17 Fla. 418, was rendered prior to the Constitution of 1885, I think that the salary of Superintendent of Public Instruction is payable from the General Fund of the County.

It is my opinion that commissions on all general taxes to the Tax Collector and Assessor are payable from the

General Fund of the County and that only commissions payable by the County Board of Public Instruction are commissions on taxes collected in Special Tax School Districts.

Yours very truly,
RIVERS BUFORD,
Attorney General.

SUPERVISOR OF REGISTRATION—BOOKS,
ASSISTANCE.

Tallahassee, Fla., July 1, 1924.

*Hon. J. A. Kirkpatrick,
Supervisor of Registration,
Pensacola, Fla.*

Dear Sir:

Replying to your letter of June 30, I beg to say there has never been any law requiring the use of loose leaf system in registration books. I do not understand upon what theory you assume you must bring forward names from the old registration books unless it has become necessary for you to make up a new set of books. There has been no change in the law with reference to making up General Election Registration books.

It is my opinion that a Supervisor of Registration is required to perform all the duties of that office and that no duty devolves upon the County Commissioners to furnish assistance for that work.

Yours very truly,
RIVERS BUFORD,
Attorney General.

CONSTABLE—FEES.

Tallahassee, Fla., July 12, 1924.

*Mr. Edward Houstoun,
Constable, 8th District,
Tallahassee, Fla.*

Dear Sir:

Replying to your letter of July 10th, I beg to say that a Constable is entitled to receive the same fees as a Sheriff for mileage and in the execution of a criminal warrant, and for the conveyance of a prisoner he is entitled to the same mileage and expense as are allowed by statute to the Sheriff whether such mileage occurs within his District or beyond the limits of his District.

A test case was made in regard to this matter by a Constable by the name of Roberts of Lake City, which case was appealed to the Supreme Court. The Supreme Court, however, decided the matter in favor of Roberts with a *per curiam* decision and, therefore, the citation of the decision would be of no value to you. If you cared to examine the transcript of the record, however, you will find the same in the Supreme Court, the case being reported as *Brown vs. Roberts*, 83 Fla., page 716, 92 Sou., page 57.

Yours very truly,

RIVERS BUFORD,

Attorney General.

SCHOOLS—BOARD OF PUBLIC INSTRUCTION—
MEMBER NOT TO BE TEACHER.

Tallahassee, Fla., July 23, 1924.

*Hon. H. B. Wiggins,
Supt. Public Instruction,
Starke, Fla.*

Dear Sir:

Replying to your letter of the 21st instant, I beg to say I do not think a member of the Board of Public Instruction can legally occupy the position of teacher in the Public Schools. I know that in some cases where a teacher has been elected, such teacher has been allowed to teach out the term because of the impracticability of securing a suitable teacher to finish the term. This action was based upon expediency and not upon the law of the matter however.

Yours very truly,

RIVERS BUFORD,

Attorney General.

CITIZENS—RESIDENCE.

Tallahassee, Fla., August 4, 1924.

*Hon. W. F. Coachman,
Jacksonville, Fla.*

Dear Sir:

Replying to your letter of July 24th, I beg to say, in my opinion an individual can not establish citizenship in Florida while residing a greater part of the time in some other State. One is only recognized as a citizen with rights of citizenship in this State, who has resided in the State

continuously for a period of 12 months and in a particular County for a period of 6 months. There is a difference between citizenship and residence. A person becomes a resident of this State immediately upon arriving here with the bona fide intention of making this his permanent domicile, but acquires the right of citizenship by continuing to carry out that intention. To establish proof of his citizenship it would be well for him to register as soon as he is eligible for registration. This he can do at any time by filing an affidavit with the Tax Collector at the time of paying his taxes after residing in the State one year and the County 6 months.

Short visits to points out of the State either for business or pleasure after taking up the domicile in this State, would not be considered as breaking the continuity of one's residence and would not affect one's status.

With kindest personal regards, I am,

Yours very truly,

RIVERS BUFORD,

Attorney General.

ELECTION—REGISTRATION.

Tallahassee, Fla., August 11, 1924.

*Hon. F. M. Ironmonger,
Supervisor of Registration,
Jacksonville, Fla.*

Dear Sir:

Replying to your inquiry of August 9th, I beg to advise. Inasmuch as the Primary Election Law provides that any person who is registered to vote in the Primary shall be held to be sufficiently registered to qualify such person to vote in the General Election that a person who registered under the provisions of Section 313, Revised General Stat-

utes, becomes thereby properly registered to qualify to vote in a General Election and, it is my opinion, that the affidavits required under this Section may be made before the Tax Collector at any time when the person wishing to make the same is then and there paying his or her poll tax. The registration on such affidavits should be made by the Supervisor of Registration when such affidavits are delivered to him by the Tax Collector.

Yours very truly,
 RIVERS BUFORD,
 Attorney General.

SCHOOLS—BOARD OF PUBLIC INSTRUCTION—
 REDISTRICTING OF COUNTY.

Tallahassee, Fla., August 12, 1924.

Mr. R. H. Weaver,
Bristol, Fla.

Dear Sir:

I have your letter of August 11th, but I do not sufficiently understand your question as to be able to answer it intelligently.

I do not think that the officials of a County have a right to re-district a County so as to put out of office before his term expires any constitutional office-holder. Section 441, Revised General Statutes of Florida, provides that Boards of Public Instruction shall consist of not more than three members, no two of whom shall reside in the same District. Therefore, when a County is re-districted it should be done so that it becomes effective either at the expiration of the term of office of the members of the County Board of Public Instruction or else in such a manner as to leave each member of the Board in a separate District.

A member of the Board of Public Instruction holding office at the time a County is so re-districted would become the member of the Board from the District in which he resides for the balance of his term, regardless of what numerical designation may be applied to that District.

This probably gives you the statement of my view upon the subject inquired about.

Yours very truly,
RIVERS BUFORD,
Attorney General.

WITNESSES—ATTENDANCE REQUIRED.

Tallahassee, Fla., August 13, 1924.

*Mr. W. J. Green,
Old Town, Fla.*

Dear Sir:

Replying to your letter of August 12th, I beg to say it is my opinion where a person is summoned to Court as a witness in a criminal case that the Constitution and law requires him to comply with such summons. This is not true in a civil case.

In a criminal case a Trial Judge may require such security for costs as he may deem proper or require an insolvency affidavit to be filed and thereupon, issue subpoenas for a limited number of witnesses at the cost of the County.

Yours very truly,
RIVERS BUFORD,
Attorney General.

SUPERVISOR OF REGISTRATION—SEPARATE
BOOKS FOR PRIMARIES AND GENERAL
ELECTIONS.

Tallahassee, Fla., September 12, 1924

*Hon. J. D. Frierson,
Supervisor of Registration,
Punta Gorda, Fla.*

Dear Sir:

The General Election registration books are entirely different from the Primary Election registration books.

The Supervisor of Registration is required to keep both sets of books; the Primary Election books to be used for the registration of persons who desire to vote in Primary Elections and to be used by the Inspectors in holding Primary Elections. The General Election registration books are to be used for the registration for all other elections, both General and Special. The law provides that persons who are registered on the Primary Election books and who are otherwise qualified may vote upon such registration in the General Elections, but it does not provide that such persons upon such registration can vote in any Special Elections. The Courts have held that where the Primary Election books were used in the holding of a bond election that such election was invalid. Therefore, it is necessary for registration to be made in both sets of books. The Supervisor of Registration has no authority to keep or transfer a name from the Primary Election Registration Book to the General Election Registration book, or vice versa.

Yours very truly,
RIVERS BUFORD,
Attorney General.

ELECTIONS—CANDIDATES BY PETITION.

Tallahassee, Fla., September 20, 1924.

*Mr. B. F. Buchanan,
Bunnell, Fla.*

Dear Sir:

I have your letter of September 20th.

Under the statute enacted by the Legislature of 1923 only persons who did not participate as voters or candidates in a Primary Election may have their names put on the official General Election ballot by petition.

Yours very truly,

RIVERS BUFORD,

Attorney General.

ELECTIONS—REGISTRATION BEFORE TAX
COLLECTOR.

Tallahassee, Fla., September 20, 1924.

*Hon. R. F. Bowden,
Tax Collector Duval County.
Jacksonville, Fla.*

Dear Sir:

Replying to your letter of September 19th, I beg to say I do not know that I can make my opinion in regard to the construction and operation of Section 313, Revised General Statutes of Florida, more clear than I have already written, but I will try.

Section 313, Revised General Statutes of Florida, provides: "All persons desiring to register may be entitled to do so when paying their poll tax by taking and sub-

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scribing to an oath in writing before the Tax Collector, who is hereby empowered to administer same."

This affidavit made at any time should be transmitted to the Supervisor of Registration. It only entitles the name of the register to be entered on the Primary Election book. Section 310, Revised General Statutes of Florida, provides, "that at all election precincts located wholly or in part within a City of more than 20,000 population biennial registration shall be required, and all persons so registering shall be deemed duly registered electors for the General Election next following the Primary for which they register." Therefore, while a person may be registered upon making the affidavit between the date of the Primary and the next General Election, such person would not be entitled to vote upon such registration at the next General Election because such registration was not made for the Primary preceding that General Election and, therefore, such registration could be of no value to the person so registering as the time has passed for registration for the Primary Election, and it would tend to cause great confusion.

I would, therefore, suggest that it would be well for the Tax Collector to advise all persons who express a desire to register by making affidavit before the Tax Collector that such registration made at this time can not avail them anything and if they wish to vote in the General Election, it will be necessary in case their names are not already on the General Election Registration Books and in case they were not registered for the last Primary Election, for them to register before the Supervisor of Registration, or his Deputies, in the usual manner to qualify to vote in the General Election.

Yours very truly,
RIVERS BUFORD,
Attorney General.

TAX DEEDS—STATUTE OF LIMITATIONS.

Tallahassee, Fla., September 25, 1924.

*Hon. Carl E. Royer,
Clerk Circuit Court,
LaBelle, Fla.*

Dear Sir:

Replying to your letter of September 22nd, I beg to say it is my opinion that the statute of limitation begins to run in regard to the holder of the tax deed from the date of the deed and not from the date of the certificate.

Yours very truly,

RIVERS BUFORD,

Attorney General.

SHERIFF—FEES FOR IMPOUNDING CATTLE.

Tallahassee, Fla., October 1, 1924.

*Hon. Robt. H. Roesch, Clerk,
Board of County Commissioners,
Bradenton, Fla.*

Dear Sir:

Replying to your letter of September 29th, requesting on behalf of the Board of County Commissioners my opinion as to its authority for paying Sheriff's fees for impounding cattle under the provisions of Chapter 9514, Acts of 1923, I beg to say:

It is my opinion that inasmuch as the statute makes it the duty of the Sheriff to enforce the law, it thereby imposes upon the County the duty of paying the fees where the property impounded fails at sale to bring the amount of the costs accrued.

The Sheriff's fees in such cases should be figured according to the fee bill for attachment of live stock and, it is my opinion, when the bills for such fees are properly presented and there is shown a deficit between the amount realized at the sale and the amount of the fees, then the Board of County Commissioners should, from the General Fund of the County, pay such deficit.

Yours very truly,

RIVERS BUFORD,

Attorney General.

ELECTION—CANDIDATES BY PETITION.

Tallahassee, Fla., October 1, 1924.

*Hon. L. L. Barber,
Clerk Circuit Court,
Cross City, Fla.*

Dear Sir:

Replying to your letter of September 29th, I beg to say it is my opinion that Section 256, Revised General Statutes, as amended by Chapter 9293, Acts of 1923, authorizes only such persons who have not participated in the Primary having their names printed on the official ballot by petition.

Yours very truly,

RIVERS BUFORD,

Attorney General.

SHERIFF—FEES SERVING CAPIAS OR WARRANT.

Tallahassee, Fla., October 6, 1924.

*Hon. J. R. Merritt,
 Sheriff St. Lucie County,
 Fort Pierce, Fla.*

Dear Sir:

Replying to your letter of October 1st, I beg to say I know of no theory under which a fee of 30c can be charged for serving copy of a capias or warrant. A Sheriff is entitled to pay for making copies of any paper which he is required to copy, but the law provides a fee for serving the warrant and requires the Sheriff as a part of such serving of the warrant to deliver to the accused a copy of the same.

Yours very truly,

RIVERS BUFORD,

Attorney General.

BOND TRUSTEES—COMPENSATION.

Tallahassee, Fla., October 9, 1924.

*Hon. D. H. McCallum,
 Clerk Circuit Court,
 Crestview, Fla.*

Dear Sir:

Replying to your letter of October 8th, I beg to say I can see only one construction to be placed on Section 1549, Revised General Statutes of Florida.

The fees payable to Trustees are payable out of the General Fund of the County. Trustees are entitled to 1½% on the first \$10,000.00 received by them as Trustees and

one-half of 1% on all monies received in excess of \$10,000.00. They are then entitled to like fees for paying out or disbursing the fund.

The figures submitted by your attorney appear to have been made upon this basis.

Yours very truly,

RIVERS BUFORD,

Attorney General.

ELECTIONS—CANDIDATE BY PETITION.

Tallahassee, Fla., October 9, 1924.

Hon. J. H. Hancock,
Punta Gorda, Fla.

Dear Sir:

I have your letter of October 8th, asking my opinion as to the validity of Section 256, Revised General Statutes of Florida, as amended by Chapter 9293, Acts of 1923.

The Supreme Court of Florida has held that it is the duty of administrative officers to conform to the requirements of legislative Acts and that administrative officers have no right or authority to question the constitutionality of such Acts.

It is my opinion that the provisions of the Chapter above referred to are valid and constitutional.

The Legislature of the State may prescribe certain tests and conditions which must be met by persons who offer themselves as candidates either for election or appointment to State office. The Legislature has power to fix the classification of persons who may have their names printed on the ballot by petition and exercising this authority the Legislature has provided that only those persons may have their names printed on the ballot by petition who have not participated as a voter or as a candidate in a Primary

election held to nominate candidates for any party. It, therefore, becomes the duty of the Board of County Commissioners before they are authorized to place a name on the ballot by petition to require evidence that such person did not participate as a candidate, or as a voter in a Primary election held to nominate candidates to be voted on in the General Election to which the petition applies.

This does not preclude any person from election to office because the statutes provide that a blank space shall be left in which any voter has the right to write the name of and vote for any person for whom he may wish to cast his ballot, but it does preclude the County Commissioners from printing on the ballots the name of any except those who come within the authorized classification. Those who may not have their names printed on the ballot are at liberty to make a campaign and request the voters to write the name of such candidate on the ballot and to vote for such person when the name has been so written by the voter.

You understand, of course, that this is a matter upon which the Attorney General is not authorized to render an official opinion and, therefore, you will not consider this as an official expression from this office but merely as my personal opinion rendered as a matter of courtesy to you.

Yours very truly,
RIVERS BUFORD,
Attorney General.

SHERIFF—FEES—SERVICE JURY VENIRE.

Tallahassee, Fla., October 11, 1924.

*Hon. R. A. Henderson, Jr.,
Atty. Bd. of Co. Commrs.,
Ft. Myers, Fla.*

Dear Sir:

Replying to your letter of October 6th, I beg to say:

It is my opinion that a Sheriff is entitled to a fee of \$5.00 for serving a venire for a grand or petit jury, together with 12½c per mile for each mile necessarily traveled, to serve such process. That he is entitled to pay for each copy of the venire made by him to be delivered to each juror. That he is entitled when required to summon a special venire either from the body of the County or from bystanders 20c for each juror served, together with mileage and pay for copies where copies are made the same as obtains in regard to regular venires for grand and petit jurors.

Yours very truly,
RIVERS BUFORD,
Attorney General.

 CITIZENS—RESIDENCE.

Tallahassee, Fla., October 16, 1924.

*Mr. C. A. Wilcox,
Clearwater, Fla.*

Dear Sir:

Replying to your letter of October 10th I beg to say whether or not a person who formerly lived in Florida and

moved to California loses his or her citizenship by such move depends largely upon what the mental attitude of such person was.

If such person left the State intending to be away only temporarily and at all times intending to return at the first opportunity, then such person could retain his or her citizenship in Florida and exercise the rights thereof upon returning to this State. If, however, the person left Florida intending at the time to abandon this State as the place of legal domicile and intending to establish a domicile in the place to which such person went, and in the carrying out of this intention should register and exercise the rights of citizenship in such other place, then such person would lose the right of citizenship in the State of Florida and upon returning would be required to reside in the State 12 months and in the particular County 6 months to acquire the right to register and vote in such County.

Yours very truly,

RIVERS BUFORD,

Attorney General.

ELECTIONS—POLL TAXES—PAYMENT
REQUIRED.

Tallahassee, Fla., October 16, 1924.

*Hon. B. L. Blackburn,
Supervisor of Registration,
Hillsborough County,
Tampa, Fla.*

Dear Sir:

Replying to your letter of October 13th, I beg to say as I construe the statutes a new resident of the State of Florida does not have the same status with reference to paying poll tax as that of a person just becoming of age.

If a person otherwise qualified and within the poll tax age has been within the State of Florida only one year and can produce a poll tax receipt for the previous year from the State from which he came, then he is only required to pay one year's poll tax in this State to meet the poll tax prerequisite.

Yours very truly,
RIVERS BUFORD,
Attorney General.

ELECTIONS—BALLOTS—INSERTING NAMES

Tallahassee, October 23, 1924.

*Mr. Z. E. Booe,
Bunnell, Fla.*

Dear Sir:

Replying to your letter of October 21st, I beg to say:

The law requires blank spaces to be left on the ballots used in the General Election so that the voter may write the name and vote for any person that he may wish to vote for, but this privilege does not go further than to allow the voter to write the name on the ballot and it would not, therefore, be proper for any other person to stamp or write names on the ballots to be used by the voters. The writing of the name on the ballot must be the voluntary act of the voter.

It is my opinion that in filling in the name on the ticket the voter may use a pencil, pen or a gummed strip with the name printed on and then place his X mark before the name so inserted and that the same should be counted.

Yours very truly,
RIVERS BUFORD,
Attorney General.

LANDS—BOTTOM—PURCHASE.

Tallahassee, Fla., October 24, 1924.

*Hon. J. L. Kelly,
Clearwater, Fla.*

Dear Kelly:

I have your letter of October 22nd.

The procedure under which bottom lands are purchased from the Trustees of the Internal Improvement Fund is as follows:

The proposed purchaser locates a piece of bottom land, has a survey made, including all the bottoms in that area over which the water is less than three feet in depth at high tide. He then makes a plat and blue print of this area showing the boundaries and acreage, and also showing definite starting points for survey so that legal descriptions can be made in deeds. He then makes written application to the Trustees to purchase the bottoms desired, offering what he wishes to offer for the same. If the Board considers the offer at all near an adequate price, it will have its inspector to make an inspection of the property and to report to the Board his appraisal of the value. Then if the party wishing to purchase is willing to agree to bid as much as the Board deems to be the value of the property, it will be advertised for sale, and if a price is offered which the Board deems adequate, the land will be sold to the highest bidder. If, however, the bottom land directly joins land of the proposed purchaser, the Board will name him a price at which the Board will be willing to sell the lands to him without advertising for bids, and in that case will only advertise for objectors to the same as is required by statute.

Yours very truly,
RIVERS BUFORD,
Attorney General.

CLERK CIRCUIT COURT—REPORT OF COMPENSA-
TION FOR UNOFFICIAL DUTIES NOT
REQUIRED.

Tallahassee, Fla., October 29, 1924.

*Hon. P. C. Eldred,
Clerk Circuit Court,
Fort Pierce, Fla.*

Dear Sir:

Replying to your letter of October 27th I beg to say it is my opinion that the compensation which you receive for making abstracts of title for individuals is a matter entirely outside of your official duties and such items of compensation should not be reported or accounted for as constituting a part of the remuneration received by you as Clerk of the Circuit Court.

Yours very truly,
RIVERS BUFORD,
Attorney General.

SHERIFF—DEPUTIES—APPOINTMENT.

Tallahassee, Fla., October 31, 1924.

*Hon. O. L. Dayton,
County Judge, Pasco County,
Dade City, Fla.*

My dear Sir:

Replying to your letter of October 29th, I beg to say it is my opinion that the Sheriff of the County has the exclusive right to employ and discharge Deputies and that no other official is charged with any duty relative to the

selection of such Deputies or to their discharge. The Sheriff has the right to discharge a Deputy for any reason that may appear sufficient to the Sheriff. The only function of the Board of County Commissioners in connection with such matter is to pass upon the sufficiency of the bond offered.

Yours very truly,
RIVERS BUFORD,
Attorney General.

TAXATION—LICENSES—REAL ESTATE AGENT.

Tallahassee, Fla., November 3, 1924.

*Hon. D. F. Canfield,
Tax Collector Highlands County,
Sebring, Fla.*

Dear Sir:

Replying to your letter of November 1st, I beg to say, it is my opinion that real estate agents are chargeable with a license tax in each County in which they do business whether lands offered for sale by such agent are located within the County where the agent is offering them for sale or in some other County.

Yours very truly,
RIVERS BUFORD,
Attorney General.

TAXATION—ASSESSMENT—UNKNOWN.

Tallahassee, Fla., November 3, 1924.

*Hon. Arthur Butt,
Orlando, Fla.*

Dear Sir:

Replying to your letter of November 1st, I beg to say, when lands are not returned by the owner for taxes they should be assessed as "unknown."

The Tax Collector has no legal authority to pro-rate an assessment as suggested in your letter.

Yours very truly,
RIVERS BUFORD,
Attorney General.

COURTS—COSTS ON ACQUITTALS.

Tallahassee, Fla., November 3, 1924.

*Hon. W. W. Clark,
Milton, Fla.*

Dear Mr. Clark:

Replying to your letter of October 30th, I beg to say it is my opinion that the case of DeSoto County vs. Howell, 51 Fla. 160, 40 Sou. 162, settles the question in this State as to what costs should be paid by the County in a criminal case when the defendant is discharged or acquitted.

It appears to me under the statute and decision in the above stated case that the County is liable for the cost of witnesses under a state of facts as set up in your letter.

Yours very truly,
RIVERS BUFORD,
Attorney General.

SCHOOLS—CHARTERS.

Tallahassee, Fla., November 6, 1924.

*Mr. L. A. Kalbach,
Acting Commissioner,
Bureau of Education,
Washington, D. C.*

Dear Sir:

Replying to your letter of November 1st, I beg to say it is my opinion that an educational institution having the power to confer degrees may be chartered either under Sections 4499 to 4509, Revised General Statutes of Florida, or by an Act of the Legislature.

There have not been enough of these institutions chartered in this State for me to say that as a general rule either particular course has been adopted in preference to the other.

Yours very truly,
RIVERS BUFORD,
Attorney General.

TAXATION—LICENSES—HALF YEAR.

Tallahassee, Fla., November 8, 1924.

*Hon. J. R. Roberts,
Tax Collector Dixie County,
Cross City, Fla.*

Dear Sir:

Replying to your letter of November 6th, I beg to say Tax Collectors are not authorized to issue half year licenses at the beginning of a license year.

Therefore, you are not authorized to issue licenses as suggested in your letter.

Yours very truly,
RIVERS BUFORD,
Attorney General.

SHERIFFS—COMPENSATION FOR SERVICE OF
SEARCH WARRANTS.

Tallahassee, Fla., November 10, 1924.

*Hon. L. L. Pararo,
Clerk, Circuit Court,
Crawfordville, Fla.*

Dear Sir:

Replying to your letter of November 7th, I beg to say it is my opinion that Chapter 9321, Acts of 1923, supersedes all prior legislative acts in regard to the issuance and service of search warrants in connection with the enforcement of the prohibition law except those Sections of the statutes which are specifically stated not to be affected or repealed.

If the search is actually made it appears to me that the Sheriff is entitled to his costs.

Yours very truly,
RIVERS BUFORD,
Attorney General.

SHERIFFS—FEES—WHEN PAYABLE.

Tallahassee, Fla., November 10, 1924.

*Capt. W. R. Maynard,
Sheriff Collier County,
Everglade, Fla.*

Dear Sir :

Replying to your letter of November 6th, I beg to say it is my opinion that the Sheriff is not required to wait for final disposition of a case to collect the fees due him for services. Under the facts stated in your letter I think you are entitled to receive your fees at the time you presented your bill.

This rule, however, does not apply to County Judges and Justices of the Peace because these officers are not entitled to pay unless an indictment is returned, while the Sheriff being bound to serve processes that are placed in his hands and having no right of discretion as to whether he will serve the processes or not, is entitled to his fees when the same have been earned.

Yours very truly,
RIVERS BUFORD,
Attorney General.

OFFICES—APPOINTMENT—UNEXPIRED TERM.

Tallahassee, Fla., November 10, 1924.

*Hon. E. M. Magaha,
Fort Myers, Fla.*

Dear Sir :

Replying to your letter of November 7th, I beg to say it is my opinion that where an elective office becomes

vacant by suspension, removal, or otherwise, the Governor is authorized to appoint an incumbent only until the next general election occurring after such appointment. If there is a candidate running in such general election for the balance of the unexpired term and he is elected for such remainder of the unexpired term, he is entitled to immediately succeed the appointee and hold the office until the end of that term. But a candidate in the general election who runs for the next ensuing term in such office is not entitled to take the office under such election until the beginning of the next ensuing term. If no candidate runs for the remainder of the unexpired term, then the original appointee will continue to hold the office until the successor qualifies in the beginning of the next ensuing term unless the Governor sees fit to appoint some one else to fill the unexpired term.

Yours very truly,

RIVERS BUFORD,

Attorney General.

COUNTY SUPERINTENDENT OF PUBLIC INSTRUCTION—COMPENSATION—GENERAL
REVENUE FUND.

Tallahassee, Fla., November 12, 1924.

*Hon. Walter McLeroy,
Member School Board
Levy County,
Trenton, Fla.*

Dear Sir:

Replying to your letter of November 8th, I beg to say:
The Supreme Court in the case of State ex rel., Board
of Public Instruction of Gadsden County vs. Board of

County Commissioners, 17 Fla. 418, held that the Superintendent of Public Instruction of the County is a County Officer and that his compensation must be paid from the General Revenue Fund of the County.

Yours very truly,
RIVERS BUFORD,
Attorney General.

TAXATION—LICENSE—REAL ESTATE BROKER—
CORPORATIONS.

Tallahassee, Fla., December 5, 1924.

*Mr. D. F. Canfield,
Tax Collector Highlands County,
Sebring, Fla.*

Dear Sir:

Replying to your letter of December 2nd, I beg to say it is my opinion that where a corporation does business as a selling agent of real estate that the corporation must qualify as a real estate broker, and that each individual who represents the corporation in the selling of real estate becomes the agent of such corporation regardless of how his compensation is paid and under the law is required to pay the license tax as a real estate agent.

Yours very truly,
RIVERS BUFORD,
Attorney General.

SCHOOLS—BOARD OF PUBLIC INSTRUCTION—
MEMBERSHIP—VACANCY.

Tallahassee, Fla., December 6, 1924.

*Hon. W. D. Boydston, Chrmn.,
Board of Public Instruction,
Lake Worth, Fla.*

Dear Sir:

Under the facts stated in your letter of December 4th you would continue to hold the office of member of the Board of Public Instruction of Palm Beach County for District Number 3 until your successor shall have been appointed or elected and qualified. The Governor any time after January 1st could appoint either you or some one else as your successor to hold office until the next General Election, but if the Governor takes no action, then you continue, under the Constitution, to hold the office until further action is taken.

I would advise that you send up after January 1st application and endorsements for the appointment.

Yours very truly,

RIVERS BUFORD,

Attorney General.

SCHOOLS—SPECIAL DISTRICTS—EXTENSION
BEYOND COUNTY LIMITS.

Tallahassee, Fla., December 16, 1924.

*Hon. E. R. Simmons,
Supt. Public Instruction,
Gainesville, Fla.*

Dear Sir:

Replying to your letter of December 13th, I beg to say

under the existing statutes there appears to be no authority for a School District to extend beyond the limits of one County.

It is my opinion, however, under the provisions of the Constitution, the Legislature could enact statutes providing for the creation of Special Tax School Districts covering portions of two or more Counties. This, of course, would have to be a general law applicable to all Counties alike and I, therefore, apprehend it might meet with strenuous opposition on the floor of the Legislature because it is the disposition of most Counties to avoid mixing the County affairs of one County with the affairs of another County.

Yours very truly,

RIVERS BUFORD,

Attorney General.

COUNTY COMMISSIONERS—APPROVAL OF BONDS
—SESSION REQUIRED.

Tallahassee, Fla., December 20, 1924.

*Hon. P. L. Tippins,
Supt. Public Instruction,
Green Cove Springs, Fla.*

Dear Sir:

Replying to your letter of December 19th, I beg to say:

A Board of County Commissioners can not lawfully perform any official functions except at and in a meeting of the Board of County Commissioners, or when duly authorized by Resolution or motion adopted at a meeting of such Board.

Therefore, the approval of an official bond by members of a Board of County Commissioners made outside of a Board meeting and signed here and there by County Com-

missioners as they may be found upon the streets or elsewhere can not be deemed and held to be the official action of the Board of County Commissioners.

It is a rule of this office not to advise any person except the County Officer whose duty is involved as to how any official may perform that duty, but I am answering your letter because I assume from the statement made in your letter that you have written it on behalf of members of the Board of County Commissioners and at their request.

Yours very truly,
RIVERS BUFORD,
Attorney General.

SCHOOLS—SPECIAL DISTRICTS—BONDS.

Tallahassee, Fla., December 27, 1924.

*Mr. Jesse Montague,
Supt. Public Instruction,
Inverness, Fla.*

Dear Sir:

Replying to your letter of December 24th, I beg to say the amendment to Section 17, Article XII of the Constitution, recently ratified, authorizes the Legislature to provide for Special Tax School Districts to issue bonds under certain restrictions and does not authorize Special Tax School Districts to issue bonds except in accordance with legislative authority and, therefore, until the Legislature shall have authorized bond issues by Special Tax School Districts under the provisions of the Constitution, as amended, such Special Tax School Districts are without authority to go further than has heretofore been authorized by the Legislature.

Yours very truly,
RIVERS BUFORD,
Attorney General.

ELECTIONS—POLL TAXES—EXEMPTIONS.

Tallahassee, Fla., December 27, 1924.

*Hon. J. P. Moore,
County Tax Collector,
Moore Haven, Fla.*

Dear Sir:

Replying to your letter of December 22nd, I beg to say in my opinion the loss of a hand and part of the arm constitutes the loss of a limb as contemplated under Section 708, Revised General Statutes of Florida.

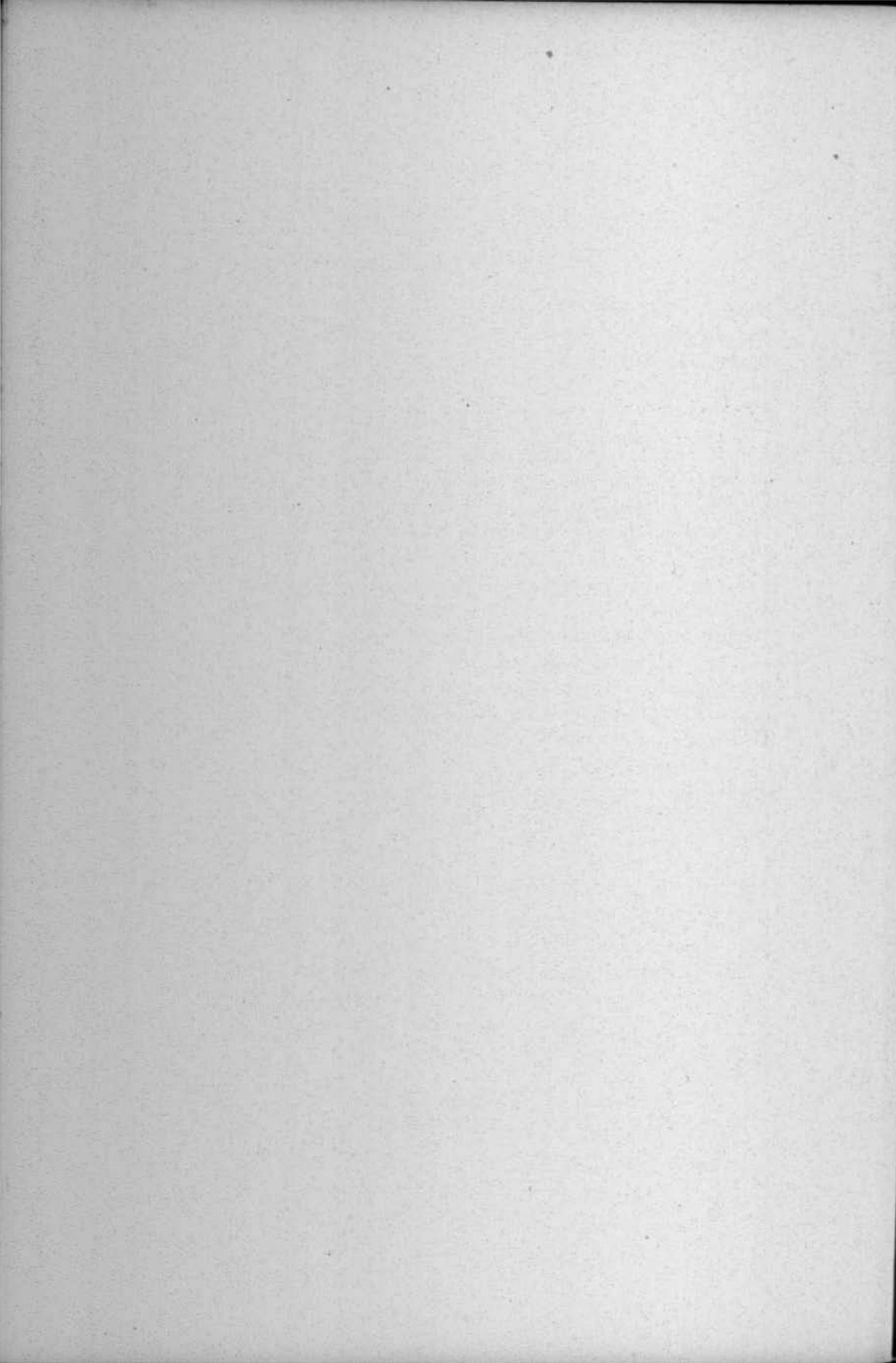
You will observe that there are two provisions of the Constitution authorizing the Legislature to provide for the enforcement of a capitation tax. Section 8 of Article VI provides that the Legislature may make the payment of a capitation tax a prerequisite to the right to vote and the Legislature in pursuance of this Article of the Constitution has enacted Section 215, Revised General Statutes of Florida, as amended by Chapter 8583, Acts of 1921, in which those persons who have lost a limb *in battle* are exempted from payment of the tax. The loss of a limb otherwise than in battle does not relieve one from the necessity of the payment of the capitation tax to entitle such person to vote.

Section 5 of Article IX authorizes the Legislature to levy a capitation tax which shall inure to the General School Fund of the State and the Legislature in pursuance of this authority has enacted Section 708, and in this Section all persons who have lost a limb are exempt from the levy of the tax. If such person does not wish to exercise the right of franchise, then the capitation tax is not enforceable as against him.

Yours very truly,

RIVERS BUFORD,

Attorney General.



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